

# Exhibit 6

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
WESTERN DIVISION

NORTHERN BOTTLING CO., INC.,	)	
	)	
	)	
Plaintiffs,	)	
	)	Case No.
-vs-	)	4:15-CV-00133
	)	
PEPSICO, INC.,	)	
	)	
	)	
Defendant.	)	

TRANSCRIPT OF AUDIOVISUAL  
DEPOSITION OF BRUCE PETERSON

Taken At  
316 North Fifth Street  
Bismarck, North Dakota  
June 28, 2017

(APPEARANCES AS NOTED HEREIN)

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-----  
ALSO PRESENT: MR. DON EMINETH, Videographer  
MR. LANGER GOKEY  
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(Pursuant to Notice to Take the Audio-  
visual Deposition of BRUCE PETERSON, a witness of  
lawful age, taken on behalf of the defendants in the  
above-entitled cause, pending in the United States  
District Court, Western Division, pursuant to  
notice, before Linda L. Gingery, a Notary Public in  
and for the State of North Dakota, at 316 North  
Fifth Street, in the City of Bismarck, County of  
Burleigh, State of North Dakota, on the 28th day of  
June, 2017, commencing at 8:59 a.m., counsel  
appearing on behalf of the respective parties as  
hereinbefore indicated:)  
  
-----  
(The following proceedings were had and  
made of record:)  
  
MR. EMINETH: This is the audiovisual  
deposition of Bruce Peterson being taken in the  
matter of Northern Bottling Company, Incorporated,  
plaintiff, versus PepsiCo, Incorporated, defendant;  
Civil No. 4:15-CV-00133 in the United States  
District Court for the District of North Dakota,  
Western Division.  
  
This deposition is being held on  
Wednesday, June 28th, 2017, at Zuger Kirmis & Smith,  
316 North Fifth Street, Bismarck, North Dakota,

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AND NOTARY PUBLIC 164  
  
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commencing at 8:59 a.m.  
  
My name is Don Emineth, a videographer  
affiliated with Emineth & Associates, court  
reporters, 216 North Second Street, Bismarck, North  
Dakota 58501. The court reporter and notary public  
is Linda Gingery of Emineth & Associates.  
  
Will counsel please state their  
appearances?  
  
MR. QUINN: Yes, my name is Tom Quinn of  
the Riley Safer Law Firm, and I here with my  
colleague Pat Ward of the Zuger Kirmis Firm, and we  
represent PepsiCo, Inc., in the litigation.  
  
MR. RAGAIN: Jim Ragain. I represent the  
plaintiff Northern Bottling and Mr. Peterson.  
  
MR. EMINETH: The witness may now be  
sworn.  
  
BRUCE PETERSON,  
having been first duly sworn, was examined and  
testified as follows:  
  
EXAMINATION  
  
BY MR. QUINN:  
  
Q. Good morning, Mr. Peterson. As I said, my  
name is Tom Quinn and I'll be asking you questions  
today. If at any time you can't hear my question or  
you don't understand it, please feel free to ask me

<p style="text-align: right;">6</p> <p>1 to repeat the question or to rephrase it and I'll do</p> <p>2 my best.</p> <p>3 <b>A. Okay.</b></p> <p>4 Q. Have you ever given a deposition before,</p> <p>5 Mr. Peterson?</p> <p>6 <b>A. No, I have not.</b></p> <p>7 Q. Okay. So let me, then, mention one or two</p> <p>8 other suggestions. With the deposition the court</p> <p>9 reporter has to type answers so mm-hmm or a nod of</p> <p>10 the head can't be recorded by the court reporter, so</p> <p>11 if a particular question calls for a yes or a no</p> <p>12 answer, please make sure that you do give an audible</p> <p>13 answer. Okay?</p> <p>14 <b>A. Okay.</b></p> <p>15 Q. Mr. Peterson, what did you do to prepare</p> <p>16 for this deposition today?</p> <p>17 <b>A. I met with Jim for, I don't know, maybe an</b></p> <p>18 <b>hour or so.</b></p> <p>19 Q. When was that?</p> <p>20 <b>A. A little bit this morning, a little bit</b></p> <p>21 <b>yesterday evening.</b></p> <p>22 Q. Did you review any documents?</p> <p>23 <b>A. Nope.</b></p> <p>24 Q. Have you looked at the deposition</p> <p>25 transcripts of any witnesses who have given</p>	<p style="text-align: right;">8</p> <p>1 that Northern Bottling has supplied to --</p> <p>2 <b>A. No.</b></p> <p>3 Q. -- PepsiCo?</p> <p>4 <b>A. I've looked at the -- I've looked at the</b></p> <p>5 <b>questions and supplied information for some of the</b></p> <p>6 <b>answers.</b></p> <p>7 Q. Okay. I see. Could you tell us your</p> <p>8 educational background, Mr. Peterson?</p> <p>9 <b>A. Well, I went to Bismarck High School, and</b></p> <p>10 <b>I went to Mary College and graduated from Mary</b></p> <p>11 <b>College here in Bismarck.</b></p> <p>12 Q. When was that?</p> <p>13 <b>A. I graduated in 1977 from Mary College.</b></p> <p>14 Q. What degree did you obtain?</p> <p>15 <b>A. Accounting.</b></p> <p>16 Q. Have you had any graduate education?</p> <p>17 <b>A. I took, I'm going to say, three or four</b></p> <p>18 <b>classes, I think.</b></p> <p>19 Q. In what subjects?</p> <p>20 <b>A. What subjects? It was towards an MBA.</b></p> <p>21 <b>Entrepreneurship, maybe, and personnel. I took</b></p> <p>22 <b>these classes at the Minot Air Force Base. I think</b></p> <p>23 <b>it was Central Michigan University.</b></p> <p>24 Q. Can you tell us your employment history</p> <p>25 since you graduated from -- is it Mary, M-a-r-y,</p>
<p style="text-align: right;">7</p> <p>1 depositions in this case?</p> <p>2 <b>A. I read Todd Hillestad's about, I'm going</b></p> <p>3 <b>to say, six months ago or maybe nine months ago.</b></p> <p>4 Q. Have you had a chance to look at any of</p> <p>5 the other documents that have been produced in the</p> <p>6 case?</p> <p>7 <b>A. I've looked at some of the documents that</b></p> <p>8 <b>we've produced. I don't believe I reviewed anybody</b></p> <p>9 <b>else's emails. I saw -- I think Langer asked me to</b></p> <p>10 <b>look at a document or two from sales from different</b></p> <p>11 <b>people who were supplying Core-Mark. And he was</b></p> <p>12 <b>working on them, asked me to just give a little</b></p> <p>13 <b>review of the work he'd done, I think, or something.</b></p> <p>14 Q. Have you also had a chance to review any</p> <p>15 of the documents that Core-Mark has produced in the</p> <p>16 case?</p> <p>17 <b>A. No.</b></p> <p>18 Q. Have you reviewed any of the pleadings in</p> <p>19 the case, either Northern Bottling's complaint or</p> <p>20 PepsiCo's answer to the complaint?</p> <p>21 <b>A. I'm not sure if I know what a pleading is.</b></p> <p>22 <b>I've read -- if that's what gets filed in court, I</b></p> <p>23 <b>believe I read the first one. I've looked at the</b></p> <p>24 <b>interrogatories and I think that's about it.</b></p> <p>25 Q. You've looked at the interrogatory answers</p>	<p style="text-align: right;">9</p> <p>1 College?</p> <p>2 <b>A. Mm-hmm.</b></p> <p>3 Q. Remember, you have to answer yes or no.</p> <p>4 <b>A. Yes, I can. Thank you, Tom. I graduated</b></p> <p>5 <b>from college. I worked for Conlin Contract Services</b></p> <p>6 <b>here in Bismarck. I then worked for Alton Nitschke,</b></p> <p>7 <b>who was a CPA. I then worked for Sun West Leasing.</b></p> <p>8 <b>Then I worked for Sund Manufacturing in Newburg,</b></p> <p>9 <b>North Dakota for, I think, about seven and a half</b></p> <p>10 <b>years, and then I've been at Northern Bottling</b></p> <p>11 <b>since. Did I go too fast?</b></p> <p>12 Q. A little bit. I just want to try to put</p> <p>13 the years on this, if we can.</p> <p>14 <b>A. Okay.</b></p> <p>15 Q. So for how many years did you work for</p> <p>16 Conlin Contract Services?</p> <p>17 <b>A. I worked there while I was in college and</b></p> <p>18 <b>for maybe six months after college. And then I</b></p> <p>19 <b>worked for Alton Nitschke for about a year. And</b></p> <p>20 <b>then I worked for Sun West Leasing for, I'm going to</b></p> <p>21 <b>say, a year and a half, maybe.</b></p> <p>22 Q. And how about Sund Manufacturing?</p> <p>23 <b>A. I think that was seven and a half years.</b></p> <p>24 Q. And that was in North Dakota?</p> <p>25 <b>A. Yes.</b></p>

<p style="text-align: right;">10</p> <p>1 Q. And then after Sund Manufacturing, you</p> <p>2 came to Northern Bottling?</p> <p>3 A. Mm-hmm. Yes.</p> <p>4 Q. Generally, can you tell us the nature of</p> <p>5 your job responsibilities at each of your places of</p> <p>6 employment before you got to Northern Bottling?</p> <p>7 A. Okay. At Conlin Contract Service, I</p> <p>8 worked for the controller of that corporation. I</p> <p>9 did some general bookkeeping. I did some</p> <p>10 accounting. Wow.</p> <p>11 Q. How about at Nitschke?</p> <p>12 A. For Alton Nitschke, I was a young</p> <p>13 accountant and we did some audits and some tax work.</p> <p>14 At Sun West Leasing I was their primary accountant,</p> <p>15 did some accounting work, just, you know, general</p> <p>16 general ledger, making sure subsidiary ledgers</p> <p>17 balanced, that sort of thing.</p> <p>18 Q. And then how about at Sund Manufacturing?</p> <p>19 A. At Sund Manufacturing I was the</p> <p>20 controller.</p> <p>21 Q. Do you recall in what year you started to</p> <p>22 work at Northern Bottling?</p> <p>23 A. October 20th, 1986.</p> <p>24 Q. And why does that day stick in your mind?</p> <p>25 A. It's my anniversary date.</p>	<p style="text-align: right;">12</p> <p>1 Q. So just so the record is clear then, in</p> <p>2 approximately 2013 you acquired the title general</p> <p>3 manager?</p> <p>4 A. Mm-hmm.</p> <p>5 Q. Yes or no?</p> <p>6 A. Yes. I'm sorry.</p> <p>7 Q. Tell us, then, the duties and</p> <p>8 responsibilities that you held over time when you</p> <p>9 had the controller title for Northern.</p> <p>10 A. I was -- well, basically in charge of all</p> <p>11 the accounting, some of the automation that</p> <p>12 occurred, was responsible for preparing financial</p> <p>13 statements. I've worked with the bank with some</p> <p>14 financing over the years, worked with the insurance</p> <p>15 companies. Not really sure how to describe that. I</p> <p>16 can reconcile a bank account like nothing.</p> <p>17 Q. So when you became general manager of</p> <p>18 Northern in 2013, how, if at all, did your job</p> <p>19 responsibilities for the company change?</p> <p>20 A. I had some of the sales guys, sales staff</p> <p>21 report to me and helped with -- a little further</p> <p>22 with the customers, and so on and so forth.</p> <p>23 Q. When you were controller, to whom did you</p> <p>24 report?</p> <p>25 A. To Langer Gokey.</p>
<p style="text-align: right;">11</p> <p>1 Q. At Northern Bottling?</p> <p>2 A. At Northern Bottling.</p> <p>3 Q. I thought you were going to say your</p> <p>4 wedding anniversary date.</p> <p>5 A. No, it's my -- it was a big day for me.</p> <p>6 Q. Okay. What was the -- can you tell us the</p> <p>7 job titles that you have held at Northern since you</p> <p>8 began working there in October of 1986.</p> <p>9 A. I was the controller and now my title is</p> <p>10 general manager.</p> <p>11 Q. So for how many years were you the</p> <p>12 controller?</p> <p>13 A. Twenty-six or seven, something like that.</p> <p>14 Q. So you were the controller until</p> <p>15 approximately 2006 or 2007?</p> <p>16 A. No. Well, I don't know exactly. I'm</p> <p>17 going to say 2000 --</p> <p>18 Q. Mr. Ward told me my answer -- my math was</p> <p>19 wrong.</p> <p>20 A. -- 13.</p> <p>21 Q. So it's 2013 --</p> <p>22 A. Ish, yeah.</p> <p>23 Q. -- that you became --</p> <p>24 A. It wasn't like, you know, a very formal</p> <p>25 change, quote, unquote.</p>	<p style="text-align: right;">13</p> <p>1 Q. When you became general manager, did you</p> <p>2 continue to have reporting responsibilities to</p> <p>3 Mr. Gokey?</p> <p>4 A. Yes, I did.</p> <p>5 Q. Could you explain for us how you and</p> <p>6 Mr. Gokey divided up job responsibilities for</p> <p>7 running Northern Bottling once you became the</p> <p>8 general manager?</p> <p>9 A. How did we divide up the responsibilities?</p> <p>10 Q. Let me rephrase that, because I can tell</p> <p>11 that was a little confusing. What -- how did --</p> <p>12 strike that.</p> <p>13 Did you and Mr. Gokey perform different</p> <p>14 job responsibilities for Northern once you became</p> <p>15 the general manager?</p> <p>16 A. Yes.</p> <p>17 Q. Could you explain that difference to us?</p> <p>18 A. The difference. Well, I think I did a bit</p> <p>19 more personnel work than what Langer did. It's, I</p> <p>20 think, a bit more organic than that.</p> <p>21 Q. What do you mean by that?</p> <p>22 A. I mean it's a small company and we wear a</p> <p>23 lot of different hats on any given day.</p> <p>24 Q. Now, you mentioned a moment ago that when</p> <p>25 you became the GM, the sales staff reported to you?</p>

<p style="text-align: right;">14</p> <p>1       <b>A. Mm-hmm.</b></p> <p>2       Q. Who were your direct reports?</p> <p>3       <b>A. Now or then?</b></p> <p>4       Q. In 2013.</p> <p>5       <b>A. In 2013 I believe it would have been Troy</b></p> <p>6       <b>Brezden, Randy Hofer, and Cary Gress.</b></p> <p>7       Q. Could you take us from 2013 to the present</p> <p>8       in terms of who it was who has had reporting</p> <p>9       responsibility or direct reports to you?</p> <p>10       <b>A. Currently, the direct reports are Troy</b></p> <p>11       <b>Brezden, Todd Hillestad, Harold Potthast from</b></p> <p>12       <b>Dickinson.</b></p> <p>13       Q. Anyone else?</p> <p>14       <b>A. I think on our org chart, not Kristi</b></p> <p>15       <b>Swearingen our controller, but having been the</b></p> <p>16       <b>controller, she and I work very closely together.</b></p> <p>17       Q. When did she become the controller?</p> <p>18       <b>A. I'm thinking about 2013, but I'm not sure</b></p> <p>19       <b>that's the right date.</b></p> <p>20       Q. So she stepped into that job somewhere</p> <p>21       around the time --</p> <p>22       <b>A. Mm-hmm.</b></p> <p>23       Q. -- you assumed the title of general</p> <p>24       manager?</p> <p>25       <b>A. Yes.</b></p>	<p style="text-align: right;">16</p> <p>1       <b>areas.</b></p> <p>2       Q. How long has Will been working for</p> <p>3       Northern?</p> <p>4       <b>A. I don't know. Full-time I think since,</b></p> <p>5       <b>I'm going to say, 2012, 2013, someplace in there.</b></p> <p>6       <b>And then he's -- had worked in some part-time</b></p> <p>7       <b>capacities as a young teenager, young man.</b></p> <p>8       Q. How old is he?</p> <p>9       <b>A. I don't know. Thirty-something, 31,</b></p> <p>10       <b>maybe.</b></p> <p>11       Q. Mr. Peterson, what is your current salary</p> <p>12       as general manager?</p> <p>13       <b>A. My current salary?</b></p> <p>14       Q. Yes.</p> <p>15       <b>A. I believe it's \$110,000 a year.</b></p> <p>16       Q. Do you also receive a bonus?</p> <p>17       <b>A. Yes, I do.</b></p> <p>18       Q. What is the bonus based upon?</p> <p>19       <b>A. It's based on profitability of the</b></p> <p>20       <b>corporation.</b></p> <p>21       Q. Is there a formula that --</p> <p>22       <b>A. Yes.</b></p> <p>23       Q. -- is used to determine that? Could you</p> <p>24       generally describe what the formula is for us?</p> <p>25       <b>A. The formula generally is net income from</b></p>
<p style="text-align: right;">15</p> <p>1       Q. Could you just briefly tell us what titles</p> <p>2       Mr. Brezden, Mr. Hillestad and Mr. Potthast hold in</p> <p>3       the company?</p> <p>4       <b>A. Troy's title is sales manager, Minot.</b></p> <p>5       <b>Harold Potthast is sales manager, Dickinson, and</b></p> <p>6       <b>Todd's current title, I believe, is franchise</b></p> <p>7       <b>manager.</b></p> <p>8       Q. And he does not have any particular</p> <p>9       geography that he's responsible for?</p> <p>10       <b>A. No.</b></p> <p>11       Q. What title does Will Gokey hold in</p> <p>12       Northern?</p> <p>13       <b>A. I think he's currently -- his title is</b></p> <p>14       <b>vice president.</b></p> <p>15       Q. Does he report to you?</p> <p>16       <b>A. No.</b></p> <p>17       Q. To whom does he report?</p> <p>18       <b>A. To our president, Langer.</b></p> <p>19       Q. What are Will Gokey's duties and</p> <p>20       responsibilities with respect to Northern?</p> <p>21       <b>A. With respect to Northern. Well, he's</b></p> <p>22       <b>involved with our sales and marketing strategies,</b></p> <p>23       <b>our day-to-day operations, looking for strategies to</b></p> <p>24       <b>perform a little bit better. We are pretty involved</b></p> <p>25       <b>with the community and Will does some work in those</b></p>	<p style="text-align: right;">17</p> <p>1       <b>the different operating entities that we have</b></p> <p>2       <b>less -- or I'm sorry. Not less, but there are add</b></p> <p>3       <b>backs for certain types of expenses. Interest is an</b></p> <p>4       <b>example, is added back and not -- adding it back</b></p> <p>5       <b>increases my bonus.</b></p> <p>6       Q. In other words, you add interest back into</p> <p>7       profitably?</p> <p>8       <b>A. Net income.</b></p> <p>9       Q. Into net income?</p> <p>10       <b>A. Mm-hmm.</b></p> <p>11       Q. What is the bonus plan in general for the</p> <p>12       senior officers that you described; Mr. Brezden,</p> <p>13       Mr. Hillestad, Mr. Potthast?</p> <p>14       <b>A. They are currently on a quarterly bonus</b></p> <p>15       <b>program that looks at gross sales, gross profit and</b></p> <p>16       <b>something that we call net franchise contribution,</b></p> <p>17       <b>which are gross profit less all operating expenses,</b></p> <p>18       <b>except the admin department.</b></p> <p>19       Q. Could you tell us in general how each of</p> <p>20       those different elements factor into the</p> <p>21       determination of bonus? And by that I mean the</p> <p>22       gross sales, the gross profits and the franchise</p> <p>23       contribution.</p> <p>24       <b>A. Each -- they receive a bonus based on the</b></p> <p>25       <b>performance of those three elements and it's</b></p>

<p style="text-align: right;">18</p> <p>1 <b>weighted a little bit differently, maybe, for each</b>  2 <b>guy. You know, I'd have to check my -- my</b>  3 <b>workpapers, my worksheets to be more specific.</b>  4 Q. Now, is your bonus not based upon these  5 three elements; sales -- gross sales, gross profits  6 or franchise contribution?  7 <b>A. No, sir.</b>  8 Q. Okay. Generally speaking, do Mr. Brezden,  9 Hillestad and Potthast receive a greater bonus if  10 they grow the profitability of the company?  11 <b>A. Yes.</b>  12 Q. What happens in terms of bonus if sales  13 grow but profitability of the company declines?  14 <b>A. They're rewarded for the growth in the</b>  15 <b>gross profit and they're penalized for the reduction</b>  16 <b>in profitability.</b>  17 Q. So, in other words, profitability of the  18 company ultimately factors into whether they have a  19 greater or lesser bonus?  20 <b>A. Ultimately, but I believe that the gross</b>  21 <b>profit and the sales are weighted more heavily.</b>  22 Q. Gross profit and gross sales?  23 <b>A. Mm-hmm. Both.</b>  24 Q. Yeah, just --  25 <b>A. I'm sorry.</b></p>	<p style="text-align: right;">20</p> <p>1 Q. Does Northern Bottling -- strike that.  2 Could you just describe for us all of the  3 divisions of Northern Bottling?  4 <b>A. All of the divisions. Currently, today,</b>  5 <b>there's the sales organizations in Minot, Devils</b>  6 <b>Lake and Dickinson, and Vending Express.</b>  7 Q. Now, you indicated that the airplane is  8 owned by LWCR Transportation; isn't that right?  9 <b>A. Mm-hmm. Yes.</b>  10 Q. And that's a subsidiary of Northern?  11 <b>A. Yes.</b>  12 Q. And the Gokey family also uses that plane  13 for its personal use; isn't that right?  14 <b>A. I believe so, yes.</b>  15 Q. Have you ever used the plane for your  16 personal use?  17 <b>A. No.</b>  18 Q. Do you know whether any other employees of  19 Northern Bottling have used the airplane for their  20 personal use?  21 <b>A. I don't believe so.</b>  22 Q. How does Northern Bottling, in its  23 financial statements, account for the Gokey family's  24 personal use of the plane?  25 <b>A. The personal use. The personal use is all</b></p>
<p style="text-align: right;">19</p> <p>1 Q. -- you have to say yes or no. That's all  2 I'm saying.  3 <b>A. Yes, both of those.</b>  4 Q. Now, Northern Bottling owns an airplane;  5 does it not?  6 <b>A. Northern Bottling owns a subsidiary that</b>  7 <b>owns an airplane.</b>  8 Q. Okay. What's the name of the subsidiary?  9 <b>A. LWCR Transportation, I believe.</b>  10 Q. Is that an LLC?  11 <b>A. I can't answer that. I don't know.</b>  12 Q. What type of corporation is Northern  13 Bottling?  14 <b>A. It's an S Corporation.</b>  15 Q. And where is it incorporated?  16 <b>A. In North Dakota.</b>  17 Q. In addition to LWCR Transportation, are  18 there any other subsidiaries of Northern Bottling?  19 <b>A. I don't think so at the current time.</b>  20 Q. What about Vending Express?  21 <b>A. That is not a corporation. It is a</b>  22 <b>division, so I'm not sure how you would classify</b>  23 <b>that in terms of what it is.</b>  24 Q. It's a division of Northern Bottling?  25 <b>A. Yes.</b></p>	<p style="text-align: right;">21</p> <p>1 <b>logged. Every -- every hour, every minute that the</b>  2 <b>plane is in use is logged and the personal use is</b>  3 <b>logged and calculated a dollar value and I believe</b>  4 <b>it goes on a 1099 for Langer or whoever might be</b>  5 <b>using it personally, but I think 100 percent of the</b>  6 <b>personal use we charge to Langer.</b>  7 Q. Are the income and expenses for the LWCR  8 Transportation rolled up into a consolidated  9 financial statement --  10 <b>A. Yes.</b>  11 Q. -- for Northern Bottling? I may have  12 misheard you, Mr. Peterson. Is the name of the  13 subsidiary LWGR Transportation?  14 <b>A. C, as in cat.</b>  15 Q. Okay. What does the LWCR stand for, if  16 you know?  17 <b>A. I think it's just simply the initials of</b>  18 <b>Langer's children.</b>  19 Q. Okay.  20 <b>A. I could make them work that way.</b>  21 Q. What is Will Gokey's salary with Northern?  22 <b>A. I don't know that.</b>  23 Q. You don't?  24 <b>A. I have no interest in knowing what that</b>  25 <b>is.</b></p>

<p style="text-align: right;">22</p> <p>1 Q. Why not?</p> <p>2 A. <b>I don't know, I guess. I could guess at</b></p> <p>3 <b>what the number is.</b></p> <p>4 Q. What's your best estimate of what it is?</p> <p>5 A. <b>I think it's around \$60,000 a year.</b></p> <p>6 Q. What makes you say that?</p> <p>7 A. <b>I think I may have heard that at one time</b></p> <p>8 <b>or another.</b></p> <p>9 Q. I'm going to ask the court reporter --</p> <p>10 maybe I'll just try to do it myself, Mr. Peterson.</p> <p>11 I'm going to show you what was marked yesterday in</p> <p>12 Mr. Gokey's deposition as Exhibits 1 and 2 and put</p> <p>13 them in front of you.</p> <p>14 Could you identify for us Gokey Exhibit 1</p> <p>15 as a copy of the balance sheet and statement of</p> <p>16 operations for Northern Bottling for the year 2015?</p> <p>17 A. <b>2014 and 2015, yes, these look like our</b></p> <p>18 <b>financial statements.</b></p> <p>19 Q. So this particular document, Exhibit 1,</p> <p>20 compares the results for 2014 and 2015; isn't that</p> <p>21 right?</p> <p>22 A. <b>Yes.</b></p> <p>23 Q. Taking a look at the first page of</p> <p>24 Exhibit 1, NB 711 --</p> <p>25 A. <b>Okay.</b></p>	<p style="text-align: right;">24</p> <p>1 account for the airplane?</p> <p>2 A. <b>As a property and equipment.</b></p> <p>3 Q. So it fits in the \$6 million-plus</p> <p>4 category?</p> <p>5 A. <b>Yes.</b></p> <p>6 Q. What is the value of the airplane?</p> <p>7 A. <b>I don't know.</b></p> <p>8 Q. Okay. Would you take a look at the second</p> <p>9 page of Exhibit 1?</p> <p>10 A. <b>Okay.</b></p> <p>11 Q. In this particular -- this is the</p> <p>12 statement of operations for -- reflecting 2014 and</p> <p>13 2015; isn't that right?</p> <p>14 A. <b>Correct.</b></p> <p>15 Q. In the sales line there's a decline of</p> <p>16 approximately \$1.6 million from 2014 to 2015. Do</p> <p>17 you see that?</p> <p>18 A. <b>Yes, I do.</b></p> <p>19 Q. Do you recall the reason for the sales</p> <p>20 decline?</p> <p>21 A. <b>Well, I think if we dug into the</b></p> <p>22 <b>information, which I don't really know off the top</b></p> <p>23 <b>of my head, we'd see that there was a change in</b></p> <p>24 <b>either number of units sold or the mix of revenue.</b></p> <p>25 Q. Did the overall economy -- I'm sorry.</p>
<p style="text-align: right;">23</p> <p>1 Q. -- do you see that in the cash line on the</p> <p>2 balance sheet that the amount of cash grew from</p> <p>3 \$496,140 in 2014 to \$1,678,392 in 2015?</p> <p>4 A. <b>Mm-hmm. Yes.</b></p> <p>5 Q. Can you explain what accounted for the</p> <p>6 approximately \$1.2 million gain in cash during 2015?</p> <p>7 A. <b>Well, it looks like we borrowed some</b></p> <p>8 <b>money.</b></p> <p>9 Q. And you determine that by referring to the</p> <p>10 long-term liability line?</p> <p>11 A. <b>Yes, sir.</b></p> <p>12 Q. Okay. There's about a \$1.1 million</p> <p>13 difference between 2014 and 2015 in that category?</p> <p>14 A. <b>Correct. Yes.</b></p> <p>15 Q. On this first page in the asset section,</p> <p>16 there's a reference to other assets and in 2014 the</p> <p>17 amount was \$2,516.679 and then 2015 it's \$3,079,808.</p> <p>18 Could you tell us what other assets consists of?</p> <p>19 A. <b>I can't tell you exactly because I'd have</b></p> <p>20 <b>to look, but I believe that we have an investment in</b></p> <p>21 <b>Wis-Pak, which is our production co-op, and WP</b></p> <p>22 <b>Beverages, which is a PepsiCo franchise company of</b></p> <p>23 <b>which Wis-Pak is the majority holder. Those are the</b></p> <p>24 <b>two main things that come to mind.</b></p> <p>25 Q. Where on the balance sheet does Northern</p>	<p style="text-align: right;">25</p> <p>1 A. <b>I think -- yes, the overall economy</b></p> <p>2 <b>declined a little bit, but I think we also had some</b></p> <p>3 <b>transshipping.</b></p> <p>4 Q. Accounting for \$1.6 million decline in</p> <p>5 sales?</p> <p>6 A. <b>I don't recall what the annual sales were</b></p> <p>7 <b>for the customers that were transshipped during</b></p> <p>8 <b>these time frames, but it's substantial, I believe.</b></p> <p>9 Q. We'll get to that a little bit later.</p> <p>10 A. <b>Okay.</b></p> <p>11 Q. You've actually done some calculations</p> <p>12 regarding the transshipment issue; isn't that right?</p> <p>13 A. <b>I've pulled some information, that's</b></p> <p>14 <b>correct.</b></p> <p>15 Q. Would you take a look at Exhibit 2?</p> <p>16 A. <b>Okay.</b></p> <p>17 Q. First page on the balance sheet you see</p> <p>18 with respect to the cash line there's a decline in</p> <p>19 the amount of cash between 2015 and 2016 of \$1.3</p> <p>20 million?</p> <p>21 A. <b>Yes.</b></p> <p>22 Q. Can you explain to us what accounted for</p> <p>23 that decline?</p> <p>24 A. <b>Just generally looking at it, it looks</b></p> <p>25 <b>like we paid off some debt and it looks like our</b></p>

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1 **profitability was hit pretty substantially.**  
2 Q. Look at the second page.  
3 **A. Mm-hmm. Yes, I mean.**  
4 Q. This is NB 718. Between the year 2015 and  
5 2016 there was approximately a \$3 million drop in  
6 sales; isn't that right?  
7 **A. That's what it says, yes.**  
8 Q. And did the continuing decline in the  
9 economy within Northern Bottling's territory  
10 continue to play a role in the loss of sales?  
11 **A. Yes, it played a role.**  
12 Q. Okay. In the cost of sales category on  
13 this line, can you tell us what that consists of?  
14 **A. What that consists of?**  
15 Q. Yes.  
16 **A. The cost of sales is the floor cost of all**  
17 **of the products that we sell.**  
18 Q. What do you mean by "floor cost"?  
19 **A. It's the invoice price that we pay for the**  
20 **products that we resell.**  
21 Q. And focusing on Pepsi beverage products,  
22 Northern Bottling purchases its products from  
23 Wis-Pak?  
24 **A. Yes.**  
25 Q. So Wis-Pak invoices Northern Bottling for

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1 the various beverage products?  
2 **A. Yes.**  
3 Q. And then the cost, the invoice price goes  
4 into the floor cost calculation?  
5 **A. Correct.**  
6 Q. Does Northern Bottling also purchase  
7 Dr. Pepper Snapple Group products from Wis-Pak?  
8 **A. Yes.**  
9 Q. And so the floor cost for those products  
10 also goes into this cost of sales line?  
11 **A. Yep, they are products that we resell.**  
12 Q. And Northern Bottling also purchases other  
13 products, beverage products from Wis-Pak?  
14 **A. That's correct.**  
15 Q. Such as?  
16 **A. Such as Klarbrunn Vita ICE, Klarbrunn**  
17 **water, some coffee. I'm sure I'm missing something.**  
18 Q. Okay. Does Wis-Pak purchase any bev --  
19 I'm sorry. Strike that.  
20 Does Northern Bottling purchase any  
21 beverage products from a source other than Wis-Pak?  
22 **A. I don't think so, and if it is, it would**  
23 **be very small.**  
24 Q. Does the cost of sales line include the  
25 floor cost of any non-beverage products?

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1 **A. Yes, if there are any that we're selling.**  
2 **Our vending company sells some candy and chips in**  
3 **this time frame. We did -- we sold some coffee.**  
4 **Ground, to be specific, ground coffee.**  
5 Q. So the floor cost of those items also  
6 would fall within the cost of sales line?  
7 **A. Yes.**  
8 Q. Now, how about the operating expense line,  
9 what expenses are included in that?  
10 **A. Salaries, delivery cost, warehousing cost.**  
11 **Costs of our service department and our admin**  
12 **departments. Transportation costs.**  
13 Q. Anything else?  
14 **A. I can't think of anything at the moment.**  
15 Q. So would the operating expense line  
16 include the salaries of all Northern Bottling  
17 employees?  
18 **A. Yes.**  
19 Q. Mr. Peterson, as someone with an  
20 accounting degree, are you familiar with the concept  
21 of variable expense -- variable cost and fixed cost?  
22 **A. I'm somewhat familiar with those.**  
23 Q. What is your general understanding of each  
24 of those terms; that is, variable cost and fixed  
25 cost?

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1 **A. Fixed cost is a cost that generally does**  
2 **not change with volume. Variable cost is a cost or**  
3 **expense that would change with some sort of**  
4 **activity, generally volume. I know there's more**  
5 **details.**  
6 Q. So among the various categories of  
7 operating expense that you identified, can you tell  
8 us whether each of these categories does or does not  
9 include variable cost?  
10 **A. I think each one of those includes both**  
11 **fixed and variable.**  
12 Q. Could you explain that, how that is so?  
13 For example, with respect to delivery or warehouse  
14 costs.  
15 **A. Delivery or warehouse costs. Well, the**  
16 **size of our building doesn't go up or down or change**  
17 **with the volume that goes through it. It's there.**  
18 **It's fixed. The total number of cases impacts the**  
19 **amount of labor that we spend. Our heat is not**  
20 **impacted by cases, but I think that when we look at**  
21 **those expenses and we start talking about their**  
22 **degree and the impact -- the degree of the impact,**  
23 **that's probably, in my mind, a little bit more the**  
24 **proper discussion to have.**  
25 Q. What do you mean by that?

<p style="text-align: right;">30</p> <p>1       <b>A. Well, I mean that when a guy, say, in the</b>  2       <b>warehouse is picking a pallet of pop or other</b>  3       <b>beverages, for him to put one more case on is so --</b>  4       <b>the cost -- the variable cost of that is so</b>  5       <b>miniscule, it's almost not there, once you hire him</b>  6       <b>and you have all these other fixed costs there.</b>  7       Q. What about delivery cost?  8       <b>A. I think that's basically the same thing.</b>  9       <b>The truck is going to be there whether it's 90</b>  10       <b>percent full or 100 percent full, and when the</b>  11       <b>delivery man takes in a pallet is the pallet -- does</b>  12       <b>it have 50 cases on it or 51 cases.</b>  13       Q. What about if the delivery man has to make  14       an extra stop to a new customer, for example?  15       <b>A. An extra stop is a little bit more</b>  16       <b>expensive.</b>  17       Q. And that's variable?  18       <b>A. And that is variable, yep, can be.</b>  19       Q. And how about service?  20       <b>A. Service department?</b>  21       Q. Yes.  22       <b>A. I'm not too sure if I understand the</b>  23       <b>question. There's both elements there.</b>  24       Q. Describe for us the variable cost elements  25       of service.</p>	<p style="text-align: right;">32</p> <p>1       Q. -- that he didn't have to drive to before  2       because there's a new customer that's got, let's  3       say, four, five, six stores, there's going to be  4       variability in terms of the amount of gas and the  5       amount of time that it takes to deliver the product;  6       right?  7       <b>A. I'm sorry. But, typically, you know, when</b>  8       <b>we do our routing, we're driving by all of those</b>  9       <b>customers, those accounts as it is. We either stop</b>  10       <b>or we don't stop.</b>  11       Q. But -- so you're saying there's no  12       variable cost in that at all?  13       <b>A. I'm saying it's very little. It would be</b>  14       <b>really hard to determine. As we're driving from</b>  15       <b>Marketplace on 20th Avenue South to Marketplace on</b>  16       <b>Broadway, for instance, there's an Enerbase account</b>  17       <b>along the way. So we're going to be driving from</b>  18       <b>Marketplace South to Marketplace on Broadway and all</b>  19       <b>of our routing is typically that. Now, if you added</b>  20       <b>an additional town with additional accounts in it</b>  21       <b>that we now have to travel additional distance, then</b>  22       <b>I think that's really variable.</b>  23       Q. Okay. And to the extent that you add a  24       substantial number of additional store outlets,  25       there may be variable costs associated with hiring</p>
<p style="text-align: right;">31</p> <p>1       <b>A. The variable cost. Well, if a machine</b>  2       <b>that they service is having any sort of difficulty</b>  3       <b>over and above what -- you know, some -- some norm,</b>  4       <b>that's probably variable. I'm not sure how I'd look</b>  5       <b>at that.</b>  6       Q. And transportation?  7       <b>A. That's largely fixed as well, I think.</b>  8       Q. Again, if you add a new customer and you  9       have to drive over to the customer's stores --  10       <b>A. Yes.</b>  11       Q. -- four, five, six stores, that's going to  12       add transportation cost; correct?  13       <b>A. Correct. Yes.</b>  14       Q. And that would be a variable cost?  15       <b>A. The incremental part I think would be</b>  16       <b>variable. It's still largely fixed.</b>  17       Q. But if you're driving to another place,  18       you're going to have gas --  19       <b>A. Yeah, but it's still largely fixed.</b>  20       MR. RAGAIN: Object to the form.  21       Q. (MR. QUINN CONTINUING) Well, I understand  22       that. I'm just trying to see if we can agree on  23       what's variable as opposed to fixed. For example,  24       if a driver has to drive to additional stores --  25       <b>A. Mm-hmm.</b></p>	<p style="text-align: right;">33</p> <p>1       additional people to deliver product or to travel  2       the distance wherever those stores may be located;  3       isn't that right?  4       <b>A. In theory I think that's correct. I've</b>  5       <b>never really seen that happen in North Dakota --</b>  6       Q. Okay.  7       <b>A. -- and in our territory.</b>  8       Q. Minot's -- strike that. Northern  9       Bottling's territory covers a fairly big geographic  10       area; isn't that right?  11       <b>A. It does.</b>  12       Q. From places like Devils Lake to Rugby to  13       Minot and points in between?  14       <b>A. That's correct.</b>  15       Q. What is the distance between Minot and  16       Devils Lake?  17       <b>A. It's approximately 120 miles.</b>  18       Q. How about between Minot and Rugby?  19       <b>A. Minot and Rugby is 60 miles,</b>  20       <b>approximately. And, of course, we go to Rugby X</b>  21       <b>number of times per week and that hasn't changed.</b>  22       Q. Does Northern Bottling keep track of its  23       sales of beverage products on a case basis?  24       <b>A. Yes.</b>  25       Q. Have you ever heard reference to</p>

<p style="text-align: right;">34</p> <p>1 eight-ounce case equivalents?</p> <p>2 A. Yes.</p> <p>3 Q. What do you understand that term to be?</p> <p>4 A. An eight-ounce equivalent is the number of</p> <p>5 ounces in a -- in a case of pop, depending on the</p> <p>6 container that it's in times 192 -- or I'm sorry.</p> <p>7 I'd have to write it down, I think, in order to get</p> <p>8 it correct for you, but, yes, I've heard of the</p> <p>9 concept.</p> <p>10 Q. So, for example, in a 24 -- strike that.</p> <p>11 Does Northern keep track of its case sales on an</p> <p>12 eight-ounce equivalent basis?</p> <p>13 A. That's not our typical reporting format,</p> <p>14 but it's an option that's available for us in our</p> <p>15 reporting software.</p> <p>16 Q. Have you ever produced reports on an</p> <p>17 eight-ounce equivalent basis?</p> <p>18 A. Yes, I believe we have from time to time.</p> <p>19 Q. And for what purpose?</p> <p>20 A. I believe the only purpose that we really</p> <p>21 do is that PepsiCo typically reports in eight-ounce</p> <p>22 cases and then we're trying to do some sort of</p> <p>23 comparison, I think.</p> <p>24 Q. So you -- your software at least allows</p> <p>25 you to convert the raw cases to eight-ounce --</p>	<p style="text-align: right;">36</p> <p>1 report them to you, but I would not be able to tell</p> <p>2 you what they are off the top of my head.</p> <p>3 Q. I'm sorry. You said it ran from 1.9 to?</p> <p>4 A. I think 2.2.</p> <p>5 Q. And was 2.2 in 2014?</p> <p>6 A. I think that's -- it's certainly in the</p> <p>7 range.</p> <p>8 Q. Have Northern's beverage sales declined</p> <p>9 year over year each year during that period from</p> <p>10 2014 to 2016?</p> <p>11 A. I think so.</p> <p>12 Q. Can you give us an approximate breakdown</p> <p>13 of the -- in percentage terms of the amount of</p> <p>14 PepsiCo brand -- branded beverage products Northern</p> <p>15 sells compared with other companies' brands, whether</p> <p>16 it's Dr. Pepper, Snapple Group or the Wis-Pak</p> <p>17 products?</p> <p>18 A. I'm not sure I can. I don't typically</p> <p>19 look at it that way. If I had -- I could give you a</p> <p>20 report, but not off the top of my head.</p> <p>21 Q. I'd like to ask you a few questions now</p> <p>22 about Northern Bottling's pricing strategy, how it</p> <p>23 prices its beverage products in the -- in its</p> <p>24 territory.</p> <p>25 How does Northern go about setting prices</p>
<p style="text-align: right;">35</p> <p>1 A. Yes.</p> <p>2 Q. -- equivalent cases? Now, in Northern's</p> <p>3 accounting system, what is the term that's used to</p> <p>4 describe a case as it's sold to customers? Is it</p> <p>5 called hard cases?</p> <p>6 A. Hard or raw.</p> <p>7 Q. Okay. Either term is used</p> <p>8 interchangeably?</p> <p>9 A. I believe so.</p> <p>10 Q. Explain for us what the term "hard case"</p> <p>11 means for purposes of Northern's accounting.</p> <p>12 A. A hard case would be -- as an example in a</p> <p>13 two-liter case there are eight bottles so it would</p> <p>14 be the eight bottles. In a 20-ounce case there are</p> <p>15 24 bottles. In a case of 12-pack cans, there are 24</p> <p>16 cans. That's -- any one of those, irregardless of</p> <p>17 the number of ounces, is a hard case or raw case.</p> <p>18 Q. For the time period 2014 through 2016 can</p> <p>19 you tell us how many hard cases of beverage products</p> <p>20 Northern sold in its territory?</p> <p>21 A. Between 1.9 million and 2.2,</p> <p>22 approximately.</p> <p>23 Q. Let's break it down for each of those</p> <p>24 years, 2014, 2015, and 2016.</p> <p>25 A. I don't memorize those numbers. I could</p>	<p style="text-align: right;">37</p> <p>1 each year?</p> <p>2 A. Well, largely we start with our largest</p> <p>3 customer, who is Walmart, and those prices are set</p> <p>4 by PepsiCo down in Bentonville, Arkansas, and we are</p> <p>5 asked whether we will agree to sell to that price or</p> <p>6 not and that becomes some sort of a benchmark, at</p> <p>7 least in my mind, of where all other pricing falls</p> <p>8 in. And then it's based on the volume that you do,</p> <p>9 the type of channel of distribution. I'm sure I'm</p> <p>10 missing something.</p> <p>11 Q. Competition?</p> <p>12 A. Yes. Thank you, Tom.</p> <p>13 Q. What about cost of delivery, does that</p> <p>14 factor in?</p> <p>15 A. To pricing?</p> <p>16 Q. Yes.</p> <p>17 A. No, sir --</p> <p>18 Q. So it doesn't matter --</p> <p>19 A. -- I don't think we do.</p> <p>20 Q. I'm sorry. So Minot -- there's a</p> <p>21 distribution facility in Minot for Northern; right?</p> <p>22 A. Correct.</p> <p>23 Q. And so for purposes of determining the</p> <p>24 price, it doesn't matter whether a truck has got to</p> <p>25 go to Devils Lake or to Rugby or just in Minot in</p>

<p style="text-align: right;">38</p> <p>1 terms of the price that's set for a customer?</p> <p>2 <b>A. We try and offer a fair price to all</b></p> <p>3 <b>customers, irregardless of where they are</b></p> <p>4 <b>geographically, and we have a distribution center in</b></p> <p>5 <b>Devils Lake as well.</b></p> <p>6 Q. How does the -- you participate in these</p> <p>7 pricing decisions each year?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. For --</p> <p>10 <b>A. Some, if not all.</b></p> <p>11 Q. Again, I'm going to focus -- I'm going to</p> <p>12 focus on, let's say, the time period over the last</p> <p>13 four or five years, not any longer than that.</p> <p>14 <b>A. (Nods.)</b></p> <p>15 Q. How does the volume of sales that a</p> <p>16 customer purchases factor into the prices that</p> <p>17 Northern sets?</p> <p>18 <b>A. Well, certainly taken into consideration,</b></p> <p>19 <b>but once the Walmart price is set by Pepsi, I'm not</b></p> <p>20 <b>sure that we really take that into consideration.</b></p> <p>21 <b>You know, Walmart is a large customer with large</b></p> <p>22 <b>volume so they become the benchmark for the other</b></p> <p>23 <b>accounts that we would call large.</b></p> <p>24 Q. Now, you say that Walmart's price is set</p> <p>25 by Pepsi. As a matter of fact, Northern gets to</p>	<p style="text-align: right;">40</p> <p>1 question.</p> <p>2 Q. (MR. QUINN CONTINUING) You can answer.</p> <p>3 <b>A. As far as I know, that's correct.</b></p> <p>4 Q. Okay. Does Northern Bottling receive</p> <p>5 funding from PepsiCo?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And through agreements called marketplace</p> <p>8 investment agreements and the like; isn't that</p> <p>9 right?</p> <p>10 <b>A. Yes, I believe that's the correct term.</b></p> <p>11 Q. And one of the purposes of that funding is</p> <p>12 to defray the expense of whatever prices Northern</p> <p>13 may decide to agree to or not with respect to</p> <p>14 national customers such as Walmart; isn't that</p> <p>15 right?</p> <p>16 <b>A. I don't think it's to -- I think you said</b></p> <p>17 <b>it's there to defray the cost. I believe it's there</b></p> <p>18 <b>to supplement the revenue, and these revenue</b></p> <p>19 <b>agreements -- or these MPIA, I think is the short</b></p> <p>20 <b>term for that agreement, we have -- in order to</b></p> <p>21 <b>receive that funding, we have to agree to do what</b></p> <p>22 <b>Pepsi is wanting us to do with those accounts.</b></p> <p>23 Q. In other words, the agreements provide</p> <p>24 funding --</p> <p>25 <b>A. Yes.</b></p>
<p style="text-align: right;">39</p> <p>1 determine what price it wants to sell to Walmart in</p> <p>2 its territory for bottle and can CSD products; isn't</p> <p>3 that right?</p> <p>4 <b>A. We can agree to it or we can be thrown out</b></p> <p>5 <b>of the store.</b></p> <p>6 Q. Well, here's my question for you.</p> <p>7 <b>A. Okay.</b></p> <p>8 Q. Have you ever seen an exclusive bottle</p> <p>9 appointment, Mr. Peterson?</p> <p>10 <b>A. I think I have seen one.</b></p> <p>11 Q. And does that bottling appointment, let's</p> <p>12 take for Pepsi-Cola, give Northern Bottling the</p> <p>13 right to set the price that it charges for bottle</p> <p>14 and can products, CSD products, in its territory?</p> <p>15 <b>A. That's what I've been told.</b></p> <p>16 Q. And so Northern has the right, if it so</p> <p>17 chooses, to charge whatever price it wants to charge</p> <p>18 to Walmart; isn't that correct?</p> <p>19 <b>A. In a theoretical sense, that is correct,</b></p> <p>20 <b>but in a practical sense, I don't agree with that.</b></p> <p>21 Q. Well, in terms of the contract rights --</p> <p>22 <b>A. Okay.</b></p> <p>23 Q. -- that Northern has, it has the right to</p> <p>24 choose what price it wants to charge to Walmart?</p> <p>25 MR. RAGAIN: Object to the form of the</p>	<p style="text-align: right;">41</p> <p>1 Q. -- in return for Northern's agreement to</p> <p>2 participate with the terms of the marketplace</p> <p>3 investment agreements; correct?</p> <p>4 <b>A. I think that's correct, yes.</b></p> <p>5 Q. And Northern can decide to sign those</p> <p>6 agreements or not; isn't that right?</p> <p>7 <b>A. That's correct.</b></p> <p>8 Q. How much in funding has Northern received</p> <p>9 from PepsiCo with respect to its beverage business</p> <p>10 in each of the last three or four years?</p> <p>11 <b>A. I'm not sure if I can give you an answer</b></p> <p>12 <b>on that without looking it up.</b></p> <p>13 Q. Give me your best estimate.</p> <p>14 MR. RAGAIN: If you can.</p> <p>15 THE WITNESS: I think any number I give</p> <p>16 you would not be correct.</p> <p>17 Q. (MR. QUINN CONTINUING) Mr. Peterson,</p> <p>18 you're the general manager of Northern Bottling.</p> <p>19 <b>A. Mm-hmm. Yes.</b></p> <p>20 MR. RAGAIN: Object to the form.</p> <p>21 Argumentative.</p> <p>22 Q. (MR. QUINN CONTINUING) The amount of</p> <p>23 money that Northern receives each year by PepsiCo by</p> <p>24 way of funding is in the millions of dollars; is it</p> <p>25 not?</p>

<p style="text-align: right;">42</p> <p>1 A. Oh, I don't believe that at all.</p> <p>2 Q. What do you think it is?</p> <p>3 A. I think it's in the hundreds of thousands</p> <p>4 of dollars, maybe a couple hundred thousand dollars.</p> <p>5 It comes in a lot of different forms and it's</p> <p>6 reported in our financial statements in a number of</p> <p>7 different areas so we tend to not look at it as a</p> <p>8 total.</p> <p>9 Q. But if you added up all that funding?</p> <p>10 A. I think it would be a couple hundred</p> <p>11 thousand.</p> <p>12 Q. Okay. And in your system you have some</p> <p>13 means of accounting for the amount of funding; isn't</p> <p>14 that correct?</p> <p>15 A. Yes.</p> <p>16 Q. So it's your testimony, then, that the</p> <p>17 price Northern ultimately agrees to charge Walmart</p> <p>18 is a benchmark price that plays a role in the prices</p> <p>19 that Northern charges other customers in its</p> <p>20 territory?</p> <p>21 A. We look at that pricing and make decisions</p> <p>22 based on what that pricing is, if that's what</p> <p>23 benchmark means.</p> <p>24 Q. Is Walmart the largest customer that</p> <p>25 Northern has in its territory?</p>	<p style="text-align: right;">44</p> <p>1 Q. Now, you indicated that pricing strategy</p> <p>2 also takes into account the channel of distribution?</p> <p>3 A. Mm-hmm. Yes. Sorry, Tom.</p> <p>4 Q. How so?</p> <p>5 A. Well, different customers have different</p> <p>6 strategies for attracting customers to their place</p> <p>7 of business and they're willing to accept different</p> <p>8 kinds of revenue mixes and package mixes.</p> <p>9 Q. So give us an example of what you mean.</p> <p>10 A. Well, if a new product comes out,</p> <p>11 typically, Pepsi will say here's a new product,</p> <p>12 here's how we're going to price it within these</p> <p>13 channels of business. Typically, a C-store will</p> <p>14 have on cold drink packages a little bit lower price</p> <p>15 than what a large format store would have and then a</p> <p>16 C-store typically would have a little bit higher</p> <p>17 price on take-home package. Generally speaking.</p> <p>18 Q. Well, take, for example, a one-liter or a</p> <p>19 20-ounce --</p> <p>20 A. Okay.</p> <p>21 Q. -- beverage product, is it your experience</p> <p>22 that the C-store typically charges on a unit basis a</p> <p>23 higher or lower price than a large format store for</p> <p>24 that product?</p> <p>25 A. Well, we do not sell one liters very often</p>
<p style="text-align: right;">43</p> <p>1 A. Yes, largest single customer.</p> <p>2 Q. Can you tell us approximately how many</p> <p>3 thousand cases of products Northern sells to Walmart</p> <p>4 each year?</p> <p>5 A. I think it's in the neighborhood of</p> <p>6 400,000 cases. It's around 20 percent.</p> <p>7 Q. Twenty percent of your business?</p> <p>8 A. Yes, sir.</p> <p>9 Q. That's 20 percent of your sales revenue?</p> <p>10 A. Twenty percent of our case volume.</p> <p>11 Revenue, I'm not sure what that number would be.</p> <p>12 Q. What other customers in terms of case</p> <p>13 volume fall within Northern's top ten customers?</p> <p>14 A. Top ten customers, it would be Walmart,</p> <p>15 Marketplace Foods. Target would be in there.</p> <p>16 There's a Leever's Super Valu or Leever's Foods out of</p> <p>17 Devils Lake group. They have four stores.</p> <p>18 Q. Can you think of any others in the top</p> <p>19 ten?</p> <p>20 A. In the top ten, no, and I typically don't</p> <p>21 look at top ten.</p> <p>22 Q. What do you look at?</p> <p>23 A. We look a lot at -- or I look a lot at</p> <p>24 customers by channel of distribution and the</p> <p>25 relative importance within that.</p>	<p style="text-align: right;">45</p> <p>1 in a large format, so 20 ounce would be a comparable</p> <p>2 package. I think that Walmart's retail price today</p> <p>3 is very similar to what we're charging -- or what</p> <p>4 our customers are charging retail in the C-stores.</p> <p>5 However, the C-stores do run promotions which will</p> <p>6 lower the price and Walmart typically does not run</p> <p>7 promotions on that package.</p> <p>8 Q. Does Walmart's pricing, in your</p> <p>9 experience, have an impact on the pricing that is</p> <p>10 charged for comparably sized products at C-stores?</p> <p>11 A. Would you say that again, please?</p> <p>12 Q. Sure. First of all, to make sure that we</p> <p>13 have a good, clean record on nomenclature, if I say</p> <p>14 C-store, I'm referring to a convenience and gas</p> <p>15 store. Is that a term you're familiar with?</p> <p>16 A. That's -- yes.</p> <p>17 Q. That's one of the channels through --</p> <p>18 A. Yes.</p> <p>19 Q. -- which Northern sells product; isn't</p> <p>20 that right?</p> <p>21 A. Correct.</p> <p>22 Q. So my question, then, is this. Let's take</p> <p>23 the 20-ounce product that you were just talking</p> <p>24 about. In your experience, within Northern's</p> <p>25 territory, does the price that Walmart charges for</p>

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1 that 20-ounce beverage product have an impact on the  
2 price that the convenience and gas stores within the  
3 territory can charge for the same product?

4 **A. Oh, I think it does.**

5 Q. How so?

6 **A. Well, I know -- well, I believe that**  
7 **Walmart has a factor that they look at. They call**  
8 **it the value hedge, something like that, and they**  
9 **want -- they want their retail pricing to be within**  
10 **a certain range of other retail pricing that they**  
11 **survey.**

12 Q. And do they survey convenience and gas  
13 outlets?

14 **A. I don't know the answer to that because we**  
15 **are not what's called an IRI market. And I'm not**  
16 **even sure what IRI stands for, but North Dakota is**  
17 **so small that that information is typically, you**  
18 **know, kind of Minneapolis, Chicago-type information.**

19 Q. One follow-up question about Walmart. Is  
20 Walmart also the source of -- the greatest source of  
21 profit for Northern Bottling within its territory?

22 **A. No, it is not.**

23 Q. So is there any other customer that  
24 generates more profit for Northern Bottling than  
25 Walmart does?

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1 **A. I'm sorry. Let me -- I don't believe**  
2 **there's another customer that generates more profit,**  
3 **but on a per-case basis, they are not our most**  
4 **profitable account.**

5 Q. Understand. But in terms of gross  
6 dollars?

7 **A. Gross dollars, they might be. I'd have to**  
8 **look.**

9 Q. Is there any doubt about that?

10 **A. Not really, but I'd want to check that to**  
11 **make sure.**

12 Q. Well, you said Walmart accounts for 20  
13 percent of case volume. What is the amount of case  
14 volume that the next largest customer accounts for?

15 **A. Oh, probably five or ten.**

16 Q. So less than half as much as Walmart's  
17 case volume?

18 **A. Yes, but their pricing structure is a**  
19 **little different.**

20 Q. So do you really have any doubt that  
21 Walmart is the -- produces the most profit dollars?

22 **A. If I had to guess, that would be my guess,**  
23 **but I would really want to check my numbers to make**  
24 **sure. And you're talking about four stores versus a**  
25 **store. There are some stores that produce very good**

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1 **margin for us, in the C&G channel specifically.**

2 Q. Oh, I understand --

3 **A. Okay.**

4 Q. -- that Northern may enjoy a higher profit  
5 margin in connection with sales in the C&G channel  
6 than it does to a customer like Walmart, but just so  
7 the record is clear, the total profit dollars that  
8 Northern gets from Walmart is greater by an order of  
9 magnitude of 100 percent over the next largest  
10 customer in its territory?

11 **A. 100 percent? I don't know.**

12 Q. You've never looked at that?

13 **A. I didn't say that. I said I don't know.**

14 **I've looked at it, I'm sure, at some time or**  
15 **another. It would be -- it's kind of what I would**  
16 **think of as sort of a gee whiz number.**

17 Q. Well, when was the last time you looked at  
18 gross profit dollars by customer for Northern's  
19 business?

20 **A. In the context that you're speaking, we**  
21 **might look at that annually. I might look at that**  
22 **annually.**

23 Q. No more frequently than annually, not even  
24 quarterly?

25 **A. I'm trying to be honest with you. I don't**

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1 **know that I look at it in that context.**

2 Q. I understand, but you're always going to  
3 try to be honest in answering your questions,  
4 Mr. Peterson.

5 **A. Thank you.**

6 Q. You don't need to tell us that, but I do  
7 want to have your best recollection of how  
8 frequently you, as the general manager of Northern  
9 Bottling, check to determine the profitability of  
10 customers within Northern's territory. How often  
11 would that be?

12 MR. RAGAIN: Object to the form. Asked  
13 and answered.

14 Q. (MR. QUINN CONTINUING) How often would  
15 that be?

16 **A. I have a sales reporting tool that I look**  
17 **at virtually every day. Now which way I look at it,**  
18 **I can't -- you know, it's so flexible.**

19 Q. You mentioned competition as a factor in  
20 pricing as well. Tell us how that plays a role.

21 **A. How does that play a role? Pricing at a**  
22 **retail level, we think that we want to be at, near,**  
23 **sometimes below what our competitors are in order to**  
24 **keep our consumers coming back and purchasing our**  
25 **product.**

<p style="text-align: right;">50</p> <p>1 Q. And who are the competitors that Northern</p> <p>2 faces in its territory?</p> <p>3 A. <b>Today the competitors are Coca-Cola,</b></p> <p>4 <b>Dr. Pepper Snapple Group and food distributors.</b></p> <p>5 Q. And the largest of those competitors is</p> <p>6 Coca-Cola?</p> <p>7 A. <b>Yes.</b></p> <p>8 Q. And would it be fair to say that when</p> <p>9 Northern sets its prices, in particular it wants to</p> <p>10 make sure it's competitive with the Coke prices?</p> <p>11 A. <b>Yes.</b></p> <p>12 Q. Now, Northern used to be a distributor of</p> <p>13 Dr. Pepper Snapple Group products; isn't that</p> <p>14 correct?</p> <p>15 A. <b>We still are.</b></p> <p>16 Q. Okay. So are there certain Dr. Pepper</p> <p>17 Snapple Group products that Northern does not</p> <p>18 distribute in its territory?</p> <p>19 A. <b>That's correct.</b></p> <p>20 Q. Which ones?</p> <p>21 A. <b>Which ones? Crush, Royal Crown, Sun Drop</b></p> <p>22 <b>I think is theirs. Hires Root Beer, I believe is</b></p> <p>23 <b>theirs. Snapple tea or whatever they call it.</b></p> <p>24 Q. All right. So those are the -- the Royal</p> <p>25 -- the doctor -- rather DPSG products --</p>	<p style="text-align: right;">52</p> <p>1 A. <b>Yes.</b></p> <p>2 Q. Northern, for the convenience and gas</p> <p>3 channel, has had a blue, a white, and a red strategy</p> <p>4 over time; isn't that right?</p> <p>5 A. <b>That's the most recent iteration, yes.</b></p> <p>6 Q. And that has to do with the amount of cold</p> <p>7 vault space or shelf space that the C&amp;G customer is</p> <p>8 asked by Northern to allocate to Northern's beverage</p> <p>9 products; is that right?</p> <p>10 A. <b>Correct.</b></p> <p>11 Q. Okay. And the more shelf space the</p> <p>12 customer is willing to give, the better the price</p> <p>13 that Northern will offer?</p> <p>14 A. <b>Yes, and that's pretty standard in our</b></p> <p>15 <b>industry.</b></p> <p>16 Q. The means by which Northern offers this</p> <p>17 price discount is in the form of funding that it</p> <p>18 provides to the customer?</p> <p>19 A. <b>Funding in the form of price off invoice.</b></p> <p>20 Q. Okay. So the actual discount occurs right</p> <p>21 on the invoice?</p> <p>22 A. <b>There's some other cash payments made for</b></p> <p>23 <b>some cooler placement, et cetera.</b></p> <p>24 Q. But in terms of the basic number of</p> <p>25 shelves that will be allocated, the funding takes</p>
<p style="text-align: right;">51</p> <p>1 A. <b>Those are the few that come to mind, yep.</b></p> <p>2 Q. -- with which Northern Bottling competes?</p> <p>3 A. <b>Yes.</b></p> <p>4 Q. And which products of DPSG, that's</p> <p>5 Dr. Pepper Snapple Group does Northern distribute?</p> <p>6 A. <b>We distribute 7Up, Dr. Pepper, Sunkist,</b></p> <p>7 <b>A&amp;W. I think that's it.</b></p> <p>8 Q. Who distributes the competitive DPSG</p> <p>9 products in Northern's territory?</p> <p>10 A. <b>I believe the company is called ABC</b></p> <p>11 <b>Bottling. I believe they're hauling it all out of</b></p> <p>12 <b>Bismarck at this point.</b></p> <p>13 Q. Does -- does Northern have a specific</p> <p>14 pricing strategy for the convenience and gas</p> <p>15 channel?</p> <p>16 A. <b>Yes.</b></p> <p>17 Q. Could you tell us in 2014 what that</p> <p>18 strategy was?</p> <p>19 A. <b>The strategy was to, I think, try and</b></p> <p>20 <b>acquire as much space for distribution of our -- of</b></p> <p>21 <b>our products as we could and that we would make</b></p> <p>22 <b>price concession for additional space.</b></p> <p>23 Q. We've already had testimony in this case</p> <p>24 about it, so let me see if we can agree on some</p> <p>25 terms.</p>	<p style="text-align: right;">53</p> <p>1 place in the form of an actual discount on the</p> <p>2 invoice price that Northern charges to the</p> <p>3 convenience and gas customer --</p> <p>4 A. <b>Yes.</b></p> <p>5 Q. -- isn't that right?</p> <p>6 A. <b>Based on the space that they give us.</b></p> <p>7 Q. And the terms that Northern proposes to</p> <p>8 offer to a convenience and gas channel customer are</p> <p>9 set forth in a document called a CDA --</p> <p>10 A. <b>Correct.</b></p> <p>11 Q. -- or also known as customer development</p> <p>12 agreement; isn't that right?</p> <p>13 A. <b>Correct.</b></p> <p>14 Q. And I see you're looking at Gokey</p> <p>15 Exhibit 3. This is a copy of the 2014 customer</p> <p>16 development agreement; isn't that correct?</p> <p>17 A. <b>That's correct.</b></p> <p>18 Q. Okay. Why don't we take a short break</p> <p>19 because I think the tape is just about at the end.</p> <p>20 A. <b>Let's take a break.</b></p> <p>21 MR. EMINETH: We'll be off the video and</p> <p>22 off the record at 10:13 a.m.</p> <p>23 (Recess was taken.)</p> <p>24 MR. EMINETH: We are back on the video,</p> <p>25 back on the record at 10:26 a.m.</p>

<p style="text-align: right;">54</p> <p>1 Q. (MR. QUINN CONTINUING) Mr. Peterson, you</p> <p>2 have in front of you Gokey Deposition Exhibit 3,</p> <p>3 which I believe you identified as the 2014 customer</p> <p>4 development agreement form for the convenience and</p> <p>5 gas channel; isn't that right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Could you just take a look at -- go</p> <p>8 to the page that's got the Bates No. 1 -- it's got</p> <p>9 four zeros and then 114, 115, and 116. I'm just</p> <p>10 going to ask you about the -- some questions about</p> <p>11 the cold vault program, CSD cold vault program.</p> <p>12 A. Okay.</p> <p>13 Q. And, by the way, the questions today in</p> <p>14 the deposition are going to be directed to bottle</p> <p>15 and can CSD products and by that I mean carbonated</p> <p>16 soft drink products.</p> <p>17 A. Okay. So none of what we call new age,</p> <p>18 none of -- no fountain drinks which are carbonated,</p> <p>19 bottle and can only?</p> <p>20 Q. Right. Let's focus on bottle and can.</p> <p>21 A. Pepsi, Mountain Dew, Dr. Pepper?</p> <p>22 Q. And the like. I believe in this exhibit</p> <p>23 there's also a reference to NCB products, which I</p> <p>24 believe stands for noncarbonated beverage products?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">56</p> <p>1 A. Correct.</p> <p>2 Q. Okay. And those products are all listed</p> <p>3 on the page NB 109; isn't that right?</p> <p>4 A. Yes, along with the noncarbs, yes.</p> <p>5 Q. Yes. Right. And the white program, going</p> <p>6 back to page 115 --</p> <p>7 A. Mm-hmm.</p> <p>8 Q. -- offered a 90 cent per case discount,</p> <p>9 assuming the customer had a minimum of six shelves</p> <p>10 and 60 percent of its total shelves in the cold</p> <p>11 vaults available for Northern Bottling products?</p> <p>12 A. Correct.</p> <p>13 Q. The red program, no funding, but the</p> <p>14 customer had to have a minimum of six shelves</p> <p>15 available for Northern Bottling products and that</p> <p>16 had to be 50 percent of the customer's total?</p> <p>17 A. Correct.</p> <p>18 Q. What happened if a C&amp;G customer was only</p> <p>19 willing to supply five shelves?</p> <p>20 A. That's a --</p> <p>21 Q. Did it not qualify for any?</p> <p>22 A. That's a really good question. I don't</p> <p>23 believe we have ever run across that situation so I</p> <p>24 don't know what we would have done. I assume that</p> <p>25 we would have said no funding.</p>
<p style="text-align: right;">55</p> <p>1 Q. Is it your understanding that this</p> <p>2 litigation is primarily focused on transshipment</p> <p>3 issues with respect to bottle and can CSD products?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. All right. So that's what we're</p> <p>6 going to focus on unless --</p> <p>7 A. Okay.</p> <p>8 Q. -- I say otherwise. Okay?</p> <p>9 A. Okay.</p> <p>10 Q. All right. So as we understand it, this</p> <p>11 CSD program for 2014 offered C&amp;G or convenience and</p> <p>12 gas customers certain funding discounts based upon</p> <p>13 how many shelves within the cold vault cooler the</p> <p>14 customer was willing to provide for Northern</p> <p>15 Bottling beverages --</p> <p>16 A. Correct.</p> <p>17 Q. -- isn't that right?</p> <p>18 A. Yep.</p> <p>19 Q. Okay. And depending -- the blue program</p> <p>20 for this year, which is on page 114, would offer a</p> <p>21 funding discount of a \$1.25 for a 20-ounce CSD, base</p> <p>22 funding that is, provided that the customer made</p> <p>23 available a minimum of six shelves and 66 percent of</p> <p>24 its total shelf space in cold vaults for Northern</p> <p>25 Bottling products?</p>	<p style="text-align: right;">57</p> <p>1 Q. Okay. Well, the red program doesn't</p> <p>2 provide any funding anyway; does it?</p> <p>3 A. Not for -- you want to look at this as CSD</p> <p>4 only, but we look at it as noncarbs and CSD</p> <p>5 together, so there's funding based on the number of</p> <p>6 shelves of noncarbs that they give us which applies</p> <p>7 to the CSDs. So the CSD is the fund generator.</p> <p>8 Q. But if -- what this red program page says</p> <p>9 is you get zero dollars CSD base funding --</p> <p>10 A. Zero additional discount.</p> <p>11 Q. Zero additional discount?</p> <p>12 A. Yes.</p> <p>13 Q. But if a customer doesn't want to supply</p> <p>14 any more than six shelves or say five shelves of</p> <p>15 space for Northern Bottling beverage products, you</p> <p>16 won't get any funding at all, whether they're CSDs</p> <p>17 or noncarbs; right?</p> <p>18 A. Not on the 20 ounce, they would not</p> <p>19 receive any funding. For -- no additional funding</p> <p>20 for 50 percent, but I believe that we later on give</p> <p>21 funding on 20 ounce for other elements.</p> <p>22 Q. Can you tell me where -- where in this</p> <p>23 document it refers to that?</p> <p>24 A. Okay. Well, let me take a look here.</p> <p>25 Well, I think when we look at page 118, all of the</p>

<p style="text-align: right;">58</p> <p>1       <b>amounts listed on here from say ten shelves, \$14.30,</b>  2       <b>they would get additional discount for maintaining</b>  3       <b>price, for maintaining an innovation cooler, that's</b>  4       <b>all funding that goes on 20 ounce.</b>  5       Q. But on this particular page, 118, a  6       customer has got to give Northern at least ten  7       shelves, 50 percent of its shelves, ten shelves;  8       correct?  9       <b>A. Yeah.</b>  10      Q. That's correct; right?  11      <b>A. That's correct.</b>  12      Q. Okay. So there is a minimum shelf space  13      requirement in each of the programs?  14      <b>A. Correct.</b>  15      Q. Okay. Take a look at Gokey Exhibit 5,  16      which I'm putting in front of you. This is a copy  17      of the 2015 customer development agreement program  18      for the convenience and gas channel; isn't it?  19      <b>A. Yes, that's what it says.</b>  20      Q. Okay. If you take a look at -- and you  21      can put the two exhibits side by side, Exhibit 5 and  22      Exhibit 3.  23      <b>A. Okay.</b>  24      Q. I'd just like you to compare the blue and  25      the white program pages in each of those two.</p>	<p style="text-align: right;">60</p> <p>1       Q. Double as opposed to -- that's more than a  2       little bit; isn't it?  3       MR. RAGAIN: Object to the form.  4       Argumentative. Go ahead.  5       Q. (MR. QUINN CONTINUING) You can answer.  6       <b>A. No.</b>  7       Q. You don't think changing a requirement  8       from six shelves to 12 doubles the amount to get the  9       same funding?  10      <b>A. Well, it doubles, but --</b>  11      MR. RAGAIN: Same objection. Asked and  12      answered. Go ahead, Bruce.  13      THE WITNESS: To me, at the time it seemed  14      reasonable to ask for that.  15      Q. (MR. QUINN CONTINUING) What happened to  16      the frontline price, I believe that's the term you  17      use, against which any discounts were applied  18      between 2014 and 2015? Did it go up?  19      <b>A. It stayed the same.</b>  20      Q. So the reduction in -- strike that. The  21      increase in the amount of shelf space for the blue  22      and the white program meant that a customer had to  23      provide more shelf space in order to get the same  24      level of funding in 2015 as it did in 2014; isn't  25      that right?</p>
<p style="text-align: right;">59</p> <p>1       <b>A. Okay. There's the blue and here's the</b>  2       <b>blue for '14. Okay.</b>  3       Q. Now, in connection with this 2015 plan,  4       Northern Bottling doubled the amount of minimum  5       shelves devoted to CSDs; isn't that correct?  6       <b>A. Yes.</b>  7       Q. Why?  8       <b>A. Well, I think it's because most of the</b>  9       <b>customers that were in that program were up in that</b>  10      <b>10 to 12 range and we wanted to ask for a little bit</b>  11      <b>more.</b>  12      Q. From all customers?  13      <b>A. Yep.</b>  14      Q. And if you look at the white program,  15      compare it side by side again, 2014 and 2015, in  16      2015 Northern Bottling increased the shelf space  17      requirement for the funding from six shelves to 11?  18      <b>A. Okay.</b>  19      Q. Did it do so for the same reason as it  20      increased shelf space requirement for the blue  21      program?  22      <b>A. Generally speaking, I think that's true.</b>  23      <b>We look at the success that we had selling the prior</b>  24      <b>year program and say can we -- can we do a little</b>  25      <b>bit better this next year.</b></p>	<p style="text-align: right;">61</p> <p>1       <b>A. I would have to look. That's what the</b>  2       <b>program says, but in actuality, I think that the</b>  3       <b>customers were already there and we were just</b>  4       <b>refining our presentation and our ask.</b>  5       Q. Well, I'd like to ask you about Enerbase.  6       <b>A. Okay.</b>  7       Q. That's one of the customers that's at  8       issue in this case --  9       <b>A. Mm-hmm.</b>  10      Q. -- right?  11      <b>A. Yep.</b>  12      Q. What did you understand -- and let's talk  13      right now in the time frame of late 19 -- late 2014,  14      early 2015. That's what my questions will relate to  15      first.  16      What did you understand in that time frame  17      to be Enerbase's reaction to the increase in shelf  18      space requirements that were reflected in the 2015  19      customer development agreement versus the 2014?  20      <b>A. I'm not sure that the specific shelf ask</b>  21      <b>was an issue.</b>  22      Q. What did you understand generally about  23      how Enerbase reacted to Northern Bottling's customer  24      development agreement proposal in 2015?  25      <b>A. I think my understanding is that generally</b></p>

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1 they thought we were asking for too much, even  
2 though our share has been consistently 60-40 to our  
3 major competitor in the areas that we can see  
4 measurement.

5 Q. Who told you that Enerbase believed that  
6 Northern Bottling was asking for too much shelf  
7 space?

8 A. It would have been Todd Hillestad.

9 Q. When -- can you tell us when it was that  
10 he told you that?

11 A. I can't. Sometime between the release of  
12 the documents and them saying we're going to go a  
13 different direction.

14 Q. Okay. Do you recall any of the words or  
15 how Mr. Hillestad described Enerbase's reaction?

16 A. No, I do not.

17 Q. Have you ever personally met anyone from  
18 Enerbase?

19 A. Personally -- well, I've met some people,  
20 but do I go out and call on store managers? No, I  
21 don't. Do I call on Tony Bernhardt, who is the CEO  
22 or general manager? No, I do not.

23 Q. Have you ever spoken to him?

24 A. Have I ever spoken to Tony? I think I  
25 spoke with him years ago when he was the manager at

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1 A. I did not.

2 Q. And you don't today?

3 A. No.

4 Q. Let me put in front of you what was  
5 previously marked Gokey Deposition Exhibit 6. It's  
6 a three-page email chain that has the Bates stamp  
7 numbers NB TB 0002006 through 2008.

8 A. (Witness reviews document.)

9 Q. Take your time to look at it,  
10 Mr. Peterson, but once you have done that, I'm going  
11 to ask you if you recognize this group exhibit as an  
12 email chain that included an email from Todd  
13 Hillestad to you, among others, dated February 15th,  
14 2015?

15 A. Okay.

16 Q. Did you receive a copy of Mr. Hillestad's  
17 email as reflected in Gokey Exhibit 6 on or about  
18 February 15th of 2015?

19 A. I believe so.

20 Q. Okay. What did you do when you -- did you  
21 read the email then?

22 A. Yes.

23 Q. What did you do after you read it?

24 A. What did I do?

25 Q. Yes.

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1 Rugby, but I don't know.

2 Q. You don't consider part of your --

3 A. That's not really my role.

4 Q. I was just going to ask you that question.

5 A. I'm sorry.

6 Q. You don't consider it part of your  
7 responsibilities -- or strike that. You did not  
8 consider it to be part of your responsibilities as  
9 general manager in 2015 to contact customers who  
10 were unhappy with proposals or requirements that  
11 Northern Bottling was imposing?

12 A. No, I did not.

13 Q. Since 2015, have you ever made any effort,  
14 in your capacity as the general manager of Northern  
15 Bottling, to contact any one at Enerbase to address  
16 Enerbase's concerns about Northern Bottling's  
17 business practices?

18 A. No. I felt other people were better  
19 qualified to do it than I was.

20 Q. Why is that?

21 A. I don't have tons of customer -- face-to-  
22 face customer experience.

23 Q. And you don't consider that to be part of  
24 the duties or responsibilities of the general  
25 manager of Northern Bottling?

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1 A. I don't remember.

2 Q. Do you have any recollection at all of  
3 becoming involved in an effort to try to dissuade  
4 Enerbase from kicking Northern Bottling out of the  
5 stores?

6 A. I'm sure I was involved in a number of  
7 discussions.

8 Q. What do you recall at all about any of  
9 those discussions in and around the February 2015  
10 time frame?

11 A. Well, as I remember, it seemed awfully --  
12 it was really surprising and blind-sided. We  
13 thought that we were going to move them from  
14 whatever program they were on to a program that  
15 granted us more space, so this was, I believe, quite  
16 a surprise. We talked about what should we do, how  
17 should we do it, what kind of time frames were we  
18 looking at, was there a possibility of reproposing.  
19 Those would be the standard things that we would do.

20 Q. Now, you were surprised when you got this  
21 email in February of 2015?

22 A. This specific one, yeah, I think so.

23 Q. Okay. Was that because no one at Northern  
24 Bottling had indicated to you before you received  
25 this email that there were issues or problems with

<p style="text-align: right;">66</p> <p>1 Enerbase?</p> <p>2 <b>A. That's correct.</b></p> <p>3 Q. Okay. Do you recall whether or not --</p> <p>4 again, in the February or 2015 time frame, whether</p> <p>5 there were any discussions at Northern Bottling</p> <p>6 about suggesting to Enerbase that it would not need</p> <p>7 to meet Northern's shelf space requirements in order</p> <p>8 to receive discounts like it had, for example, in</p> <p>9 2014?</p> <p>10 <b>A. If I followed you, I don't -- I'm not</b></p> <p>11 <b>sure.</b></p> <p>12 Q. Okay. Let me ask it a different way.</p> <p>13 <b>A. Thank you.</b></p> <p>14 Q. Did -- was there any consideration, to</p> <p>15 your knowledge, at Northern Bottling of rescinding</p> <p>16 the changes in the CDA program for Enerbase from the</p> <p>17 2015 increase in demand for shelf space back to what</p> <p>18 had been the 2014 CDA --</p> <p>19 <b>A. Okay.</b></p> <p>20 Q. -- that applied to Enerbase?</p> <p>21 <b>A. Well --</b></p> <p>22 Q. And the question is, was there any</p> <p>23 discussion about that?</p> <p>24 <b>A. There was no discussion, but if they would</b></p> <p>25 <b>have stayed on the red program at 50 percent, there</b></p>	<p style="text-align: right;">68</p> <p>1 talk to the general manager, Tony, and when he would</p> <p>2 not return calls or return emails, I believe was the</p> <p>3 situation, we -- there was a lot of contact with the</p> <p>4 category manager, I think she's called. Her name is</p> <p>5 Shawna. I can't think of her last name at the</p> <p>6 moment. And then our strategy to get back in there</p> <p>7 involved our people calling on the store managers</p> <p>8 and discussing with them the possibility and the</p> <p>9 advantages of doing business with us for those</p> <p>10 products.</p> <p>11 Q. That was Todd Hillestad who led those</p> <p>12 efforts to try to get back in Enerbase's good</p> <p>13 graces?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Did he ultimately succeed in getting a</p> <p>16 meeting with Enerbase to try to overcome --</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. -- the animosity that Enerbase had towards</p> <p>19 Northern Bottling?</p> <p>20 MR. RAGAIN: Object to the form.</p> <p>21 THE WITNESS: Yeah, I'm not -- I'm sure</p> <p>22 somebody had some animosity. I'm not sure who or if</p> <p>23 I was aware.</p> <p>24 Q. (MR. QUINN CONTINUING) You weren't aware</p> <p>25 at all that Mr. Bernhardt was deeply disappointed in</p>
<p style="text-align: right;">67</p> <p>1 was no ask for additional space. They were</p> <p>2 certainly presented with the options for additional</p> <p>3 space.</p> <p>4 Q. Mr. Peterson, at this point what I'd like</p> <p>5 is an answer to my question. Not why you think</p> <p>6 Enerbase could have done something different or not.</p> <p>7 There was no discussion, to your knowledge, at</p> <p>8 Northern Bottling to suggest to Enerbase that it</p> <p>9 could go back to the 2014 CDA program which had</p> <p>10 lower shelf space requirements for CSDs; is that</p> <p>11 correct?</p> <p>12 <b>A. I don't know. I do not believe they were</b></p> <p>13 <b>on a blue or white program, so that I believe</b></p> <p>14 <b>they've always been on a 50 percent red program.</b></p> <p>15 <b>There was no additional ask. There would have been</b></p> <p>16 <b>no place to go back to, in my opinion.</b></p> <p>17 Q. So the answer to my question is, there was</p> <p>18 no discussion about changing the shelf space</p> <p>19 requirements for Enerbase?</p> <p>20 <b>A. I don't remember there being any.</b></p> <p>21 Q. Okay. So what do you recall that Northern</p> <p>22 did during the balance of 2015 with respect to</p> <p>23 trying to get Enerbase to allow Northern back into</p> <p>24 its stores?</p> <p>25 <b>A. Well, there were a number of attempts to</b></p>	<p style="text-align: right;">69</p> <p>1 the treatment that Enerbase stores had received from</p> <p>2 Northern Bottling?</p> <p>3 MR. RAGAIN: Same objection.</p> <p>4 THE WITNESS: I think that the fact that</p> <p>5 they're back with us indicates that they may have</p> <p>6 made a mistake and that they're looking back now,</p> <p>7 saying whatever they say to make their situation</p> <p>8 seem a little bit better through their context. I'm</p> <p>9 not sure. I didn't say that correctly, but --</p> <p>10 Q. (MR. QUINN CONTINUING) But that's your</p> <p>11 opinion about Enerbase; is that right?</p> <p>12 <b>A. My opinion was that somebody else was more</b></p> <p>13 <b>disturbed with us than a number of people involved</b></p> <p>14 <b>in the decisionmaking.</b></p> <p>15 Q. What do you mean by that?</p> <p>16 <b>A. There was a fellow there who was part of</b></p> <p>17 <b>the decisionmaking and he had been with a different</b></p> <p>18 <b>C-store group prior and I believe that we had run</b></p> <p>19 <b>into a situation with him where he wasn't happy with</b></p> <p>20 <b>what was being offered and then he lost or quit his</b></p> <p>21 <b>job with that C-store and went to work at Enerbase.</b></p> <p>22 <b>And I believe shortly after he recommended that</b></p> <p>23 <b>Enerbase start buying from Core-Mark, that he left</b></p> <p>24 <b>Core-Mark and I'm sorry, but I can't think of his</b></p> <p>25 <b>name at this point.</b></p>

<p style="text-align: right;">70</p> <p>1 Q. Have you had a chance to read</p> <p>2 Mr. Bernhardt's sworn deposition testimony in this</p> <p>3 case?</p> <p>4 <b>A. No, I have not.</b></p> <p>5 Q. Would you agree with me that what he</p> <p>6 testified under oath as to the reasons for Enerbase</p> <p>7 deciding to stop doing business with Northern</p> <p>8 Bottling would be the best source of information</p> <p>9 regarding Northern -- Enerbase's motivations?</p> <p>10 MR. RAGAIN: Object to the form. Go</p> <p>11 ahead, Bruce, if you have any idea about that.</p> <p>12 THE WITNESS: I'm sure he's the best</p> <p>13 source for his own opinion.</p> <p>14 Q. (MR. QUINN CONTINUING) And he was the --</p> <p>15 <b>A. He was the decisionmaker.</b></p> <p>16 Q. He was the decisionmaker at Enerbase;</p> <p>17 right?</p> <p>18 <b>A. Mm-hmm.</b></p> <p>19 Q. And still is today?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Would you take a look at Gokey Deposition</p> <p>22 Exhibit 7? This has previously been identified as</p> <p>23 an email chain and I believe Mr. Gokey testified</p> <p>24 about this yesterday, obviously. And Mr. Hillestad</p> <p>25 did, too.</p>	<p style="text-align: right;">72</p> <p>1 Q. What do you recall?</p> <p>2 <b>A. Well, as I read it, I kind of smirked to</b></p> <p>3 <b>myself because we're -- our CDAs and what we're</b></p> <p>4 <b>offering our customers are largely -- I shouldn't</b></p> <p>5 <b>say largely. We take into account what the large</b></p> <p>6 <b>chain stores are doing because these independent</b></p> <p>7 <b>non-chain stores need to compete with them.</b></p> <p>8 Q. So you didn't think Mr. Bernhardt knew</p> <p>9 what he was talking about?</p> <p>10 <b>A. I'm not sure that he does on terms of</b></p> <p>11 <b>pricing to other customers. I don't know where he</b></p> <p>12 <b>would have that information from.</b></p> <p>13 Q. Do you -- take a look at Mr. Hillestad's</p> <p>14 email back to Mr. Bernhardt. It begins on page 116</p> <p>15 and runs through the signature line on 118.</p> <p>16 <b>A. Okay. (Witness reviews document.)</b></p> <p>17 Q. Did you participate at all in the effort</p> <p>18 to draft this response to Mr. Bernhardt?</p> <p>19 <b>A. I would think that I did.</b></p> <p>20 Q. So in the second sentence do you see where</p> <p>21 Mr. Hillestad says, "I acknowledge that we, as a</p> <p>22 company, made some mistakes in the past in regards</p> <p>23 to the handling of certain issues and customer</p> <p>24 service support"?</p> <p>25 <b>A. Okay. Yes.</b></p>
<p style="text-align: right;">71</p> <p>1 Did you ever see any of the emails in this</p> <p>2 email chain that comprises Gokey Deposition</p> <p>3 Exhibit 7 --</p> <p>4 <b>A. This --</b></p> <p>5 Q. -- and in particular what I'd like you to</p> <p>6 do is to take a look at, starting with the</p> <p>7 deposition (sic) from Tony Bernhardt to Todd</p> <p>8 Hillestad that appears on pages 118 and 119. Do you</p> <p>9 see Mr. Bernhardt's email?</p> <p>10 <b>A. Yes, I do.</b></p> <p>11 Q. Do you see where he says in the -- in the</p> <p>12 third sentence he says, Your division failed to be</p> <p>13 competitive in the past with pricing issues and did</p> <p>14 not -- didn't allow Enerbase to be competitive and</p> <p>15 profitable with the big store -- big chain store</p> <p>16 pricing with our cost pricing. Do you see that?</p> <p>17 <b>A. Mm-hmm. Yes. I'm sorry.</b></p> <p>18 Q. Did you ever -- did you read this email?</p> <p>19 <b>A. You know, I don't recall, but I may have.</b></p> <p>20 Q. Okay. Do you recall any discussion at all</p> <p>21 within Northern Bottling about the issues, including</p> <p>22 the one I just raised to you -- read to you that</p> <p>23 Mr. Bernhardt raised in his email?</p> <p>24 <b>A. It seems contextually that, yes, we would</b></p> <p>25 <b>have talked about that.</b></p>	<p style="text-align: right;">73</p> <p>1 Q. So what did you understand to be the</p> <p>2 mistakes that Northern had made in the past in that</p> <p>3 regard?</p> <p>4 <b>A. The mistakes that we had made in the past.</b></p> <p>5 <b>I think Todd is taking responsibility for the</b></p> <p>6 <b>salesman that we had who was -- he did not do as</b></p> <p>7 <b>good a job as we had hoped and has since -- I don't</b></p> <p>8 <b>recall if he was terminated or if he quit, but he</b></p> <p>9 <b>moved on, and I don't know if I knew at the time,</b></p> <p>10 <b>but my current knowledge is that there was one</b></p> <p>11 <b>delivery issue with their new store on the north</b></p> <p>12 <b>side of town.</b></p> <p>13 Q. What was the name of the salesman who</p> <p>14 didn't do a good job?</p> <p>15 <b>A. Keith -- no, Van something. I can't say</b></p> <p>16 <b>it right now.</b></p> <p>17 Q. What was it that he did that was wrong?</p> <p>18 <b>A. With Enerbase?</b></p> <p>19 Q. Yes.</p> <p>20 <b>A. I don't know if I know specifically what</b></p> <p>21 <b>was wrong with Enerbase. I know his performance was</b></p> <p>22 <b>not up to our standards in a number of other</b></p> <p>23 <b>accounts.</b></p> <p>24 Q. Can you identify any way in which it</p> <p>25 wasn't up to Northern's standards?</p>

<p style="text-align: right;">74</p> <p>1 A. Well, one specific I can remember is there  2 was a promotional period on, I think it was either  3 Rockstar Energy drink or Amp Energy drink and he  4 over ordered for the Cash Wise store in Stanley and  5 when the promotion period ended, the store still  6 had, I don't know, two or three months' supply of  7 product on hand. I remember that very specifically,  8 because during that promotion period, I believe  9 there was an incentive for the salesmen and that was  10 a not appropriate way to earn that money.  11 Q. So he oversold to that customer?  12 A. Yes.  13 Q. That was an Enerbase store?  14 A. No, that was Cash Wise in Stanley, is what  15 my recollection was.  16 Q. You don't recall what exactly this  17 individual did wrong vis-a-vis Enerbase?  18 A. No, that typically is not going to be  19 reported up to me. There should be between him --  20 he should report to a sales supervisor. The sales  21 supervisor should report to the sales manager. The  22 sales manager is going to report to me. So when  23 there's a performance issue, it's going to be -- to  24 me, it's going to be reported more as a global sort  25 of thing, I think.</p>	<p style="text-align: right;">76</p> <p>1 else did.  2 Q. Now, ultimately, in 2016 Enerbase allowed  3 Northern Bottling back into the account; isn't that  4 right?  5 A. Mm-hmm. Yes.  6 Q. And Mr. Hillestad, as reflected in Gokey  7 Exhibit 7, led that effort and it took a whole year  8 to overcome the -- Enerbase's animosity towards  9 Northern Bottling?  10 MR. RAGAIN: Object to the form.  11 Q. (MR. QUINN CONTINUING) Isn't that right?  12 A. It took a year. And there was involvement  13 from Paul Neery.  14 Q. The PepsiCo person?  15 A. From PepsiCo, yep. And I think Larry  16 Bowers was in on some of the discussions about what  17 they could do, what they wanted to do, what they  18 thought they could do that would help us.  19 Q. So the PepsiCo people were attempting to  20 assist Northern in getting back into the Enerbase  21 account?  22 A. Only in discussion. They offered -- I  23 believe, if I remember right, Paul Neery said, well,  24 can't you offer them some funding for a sign or  25 something like that and we at PepsiCo would help</p>
<p style="text-align: right;">75</p> <p>1 Q. Let me ask you this question,  2 Mr. Peterson. Was it your view at the time that  3 there really wasn't anything that Northern Bottling  4 had done wrong with respect to the Enerbase  5 customer, other than the salesman who didn't perform  6 up to the standard that he was supposed to?  7 A. You said at the time?  8 Q. Yes.  9 A. Yeah, I think that's correct.  10 Q. Have you changed your opinion --  11 A. Mm-hmm.  12 Q. -- overtime? How so?  13 A. Well, I think we've gotten a little bit  14 more information.  15 Q. In the form of discovery in this case?  16 A. I think in Todd's discussions, I think we  17 had some discussions as we were getting back in  18 there. There were some discussions about  19 expectations and what we wanted to do, but --  20 Q. You think Todd did a better job of meeting  21 the customer's needs and concerns than his  22 predecessor had done leading up to Enerbase's  23 decision to kick Northern out of its stores?  24 A. I believe Todd's our best salesman and any  25 effort he did likely was better than what somebody</p>	<p style="text-align: right;">77</p> <p>1 fund that. I mean, that was quite a while ago. But  2 I think that was the nature of their conversation  3 with us about that customer. And I also believe  4 that Langer told me that Mario Mercurio was working  5 on it and not really to worry about it because they  6 were going to get the transshipping stopped and that  7 we would back in those accounts soon.  8 Q. Did you ever suggest to Mr. Neery or  9 Mr. Bowers that Northern Bottling could use some  10 financial support to offer a different pricing  11 scheme to Enerbase?  12 A. Well, they're offering -- Pepsi gives us  13 funding and that's how we fund some of our CDAs, and  14 so on and so forth. I don't know that we ever asked  15 them, quite honestly. Sorry to have said that. But  16 I believe what they were offering was a joke because  17 these co-ops are big businesses and they're pretty  18 sophisticated, and to me that -- to offer to buy  19 them a sign seemed like --  20 Q. Did you have that conversation with  21 Mr. Bowers or Mr. Neery? Were you personally  22 involved?  23 A. I may have had that conversation with  24 Bowers, with Larry, but I don't recall.  25 Q. Did you ever ask for anything else in the</p>

<p style="text-align: right;">78</p> <p>1 way of financial support from PepsiCo to help get</p> <p>2 Enerbase back as a customer?</p> <p>3 <b>A. I don't believe we asked for anything. I</b></p> <p>4 <b>think we asked for advice, and in talking to them,</b></p> <p>5 <b>they offered -- or I believe it was Neery and then I</b></p> <p>6 <b>believe that Larry Bowers offered subsequent to that</b></p> <p>7 <b>knowing that Neery had already offered.</b></p> <p>8 Q. My question, Mr. Peterson, was whether, to</p> <p>9 your knowledge, you or anyone from Northern Bottling</p> <p>10 asked for any financial support from PepsiCo to</p> <p>11 assist Northern in getting Enerbase back as a</p> <p>12 customer --</p> <p>13 <b>A. No.</b></p> <p>14 Q. -- during the 2015 period?</p> <p>15 <b>A. No.</b></p> <p>16 Q. Do you recall what pricing scheme Northern</p> <p>17 ultimately offered to Enerbase in 2016 in connection</p> <p>18 with getting Enerbase to agree to purchase beverage</p> <p>19 products from Northern Bottling once again?</p> <p>20 <b>A. A scheme. Well, we had a strategy of</b></p> <p>21 <b>we -- I believe, if I remember correctly, we reduced</b></p> <p>22 <b>the price on 20 ounce and increased the price on</b></p> <p>23 <b>some of the other products in order to make up</b></p> <p>24 <b>for -- hopefully, for that lost margin that we gave</b></p> <p>25 <b>up on 20 ounce.</b></p>	<p style="text-align: right;">80</p> <p>1 <b>A. To monitor the progress on completion of</b></p> <p>2 <b>selling these programs in.</b></p> <p>3 Q. The CDA program?</p> <p>4 <b>A. Yes, CDA program.</b></p> <p>5 Q. Aside from convenience and gas</p> <p>6 customers --</p> <p>7 <b>A. Mm-hmm.</b></p> <p>8 Q. -- you have small retail stores and others</p> <p>9 that are customers as well; right?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Total number of customers that Northern</p> <p>12 Bottling has in its territory?</p> <p>13 <b>A. Total number of customers, active</b></p> <p>14 <b>customers. I think it's around 1,800.</b></p> <p>15 Q. Of those 1,800 how many customers actually</p> <p>16 have written agreements with Northern Bottling?</p> <p>17 <b>A. If we include national accounts, I'm going</b></p> <p>18 <b>to say 125, maybe. Totally a guess.</b></p> <p>19 Q. Okay. And the others have verbal</p> <p>20 agreements or --</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Let me show you Gokey Exhibit 8. This is</p> <p>23 a multipage document. The cover page purports to be</p> <p>24 an email from Todd Hillestad to Langer Gokey with a</p> <p>25 cc to you. Do you see that?</p>
<p style="text-align: right;">79</p> <p>1 Q. Did Enerbase ever sign a CDA agreement in</p> <p>2 2016 with Northern Bottling?</p> <p>3 <b>A. I've never seen one.</b></p> <p>4 Q. Okay. How about in 2017?</p> <p>5 <b>A. I don't think I've seen one there, either.</b></p> <p>6 <b>Apparently, they prefer to do a verbal agreement.</b></p> <p>7 Q. And when a customer wants to do a verbal</p> <p>8 agreement with Northern Bottling, Northern Bottling</p> <p>9 will agree to do that?</p> <p>10 <b>A. No, not normally.</b></p> <p>11 Q. How about in the C&amp;G channel, how often</p> <p>12 does it happen that customers have verbal agreements</p> <p>13 as opposed to written agreements?</p> <p>14 <b>A. I -- over my career I can only think of</b></p> <p>15 <b>Enerbase as being the only one.</b></p> <p>16 Q. What about Envision?</p> <p>17 <b>A. What about Envision? Yeah, I guess so,</b></p> <p>18 <b>yep.</b></p> <p>19 Q. Have you ever actually looked through the</p> <p>20 list of all the convenience and gas customers to see</p> <p>21 who does or doesn't have a written agreement?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. When was the last time you did that?</p> <p>24 <b>A. Probably in February of 2017.</b></p> <p>25 Q. Okay. For what purpose did you do that?</p>	<p style="text-align: right;">81</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. Do you recognize this exhibit as setting</p> <p>3 out the pricing proposal that was made to Enerbase</p> <p>4 to get it to return to purchasing Pepsi beverage</p> <p>5 products from Northern Bottling?</p> <p>6 <b>A. (Witness reviews document.) Your question</b></p> <p>7 <b>was do I recognize this?</b></p> <p>8 Q. Yes.</p> <p>9 <b>A. Yes, I do.</b></p> <p>10 Q. So this is the document that shows the</p> <p>11 prices that Northern Bottling was proposing to</p> <p>12 Enerbase for the various products?</p> <p>13 <b>A. I believe so, yes.</b></p> <p>14 Q. Could you just -- if you turn to the</p> <p>15 fourth page, 147, just explain to us how to read</p> <p>16 this document, what the various headings mean. And</p> <p>17 I recognize that the way this is copied, 147 and 149</p> <p>18 may actually have been part of a single spreadsheet.</p> <p>19 This is the way it was produced to us, so --</p> <p>20 <b>A. Okay. Okay.</b></p> <p>21 Q. -- that's all I've got.</p> <p>22 <b>A. You want me to tell you what each one of</b></p> <p>23 <b>these headings means?</b></p> <p>24 Q. Yes. Right.</p> <p>25 <b>A. So column No. 1 says "proposed Enerbase</b></p>

<p style="text-align: right;">82</p> <p>1 pricing high." The second column says, "all other 2 CDA customer pricing," and then there's a 3 calculation of the difference between the Enerbase 4 and the all other CDA customer pricing. 5 Q. Could I just stop you right there -- 6 A. Sure. 7 Q. -- on that page? You mentioned that the 8 word "high" appears in parentheses. What did that 9 mean to you? 10 A. I think what it means to me is that 11 29.90 -- 12 Q. In the first line? 13 A. -- in the first line is on the high side 14 of our C&amp;G customer range. There are some that -- I 15 know there's some that are higher today. During 16 this specific time frame, I'm not really sure. I 17 think there were some that were higher and some that 18 were lower. 19 Q. Okay. And then continuing on 149, if 20 that's the other half of this spreadsheet -- 21 A. Okay. 22 Q. -- please tell us what each of the 23 headings mean. We can see what they say, but if you 24 could explain what the headings mean, that would be 25 great.</p>	<p style="text-align: right;">84</p> <p>1 A. I believe we have asked for space and have 2 received it. I don't know if that means imposed or 3 not. There's no written agreement. 4 Q. That binds either Enerbase or Northern 5 Bottling to a certain amount of shelf space? 6 A. From a practical stance, no agreement 7 binds the customer. 8 Q. Well, it -- 9 A. We don't sue our customers. 10 Q. You don't? 11 A. I can't remember one that we have. 12 Q. Not a very good business practice; right? 13 MR. RAGAIN: Object to the form. 14 THE WITNESS: Not a very good business 15 form. Probably not. 16 Q. (MR. QUINN CONTINUING) But my point in 17 the question -- let me just try to rephrase it. 18 Northern Bottling has not indicated to 19 Enerbase since April of 2016 that it must allow a 20 certain number of shelves in each of its outlets to 21 display Northern Bottling beverage products in order 22 for Northern to be willing to do business with 23 Enerbase; isn't that right? 24 A. I don't know the answer to that. 25 Q. One way or another?</p>
<p style="text-align: right;">83</p> <p>1 A. Well, unit cost I'm assuming is the 29.90 2 divided by 24 units on the first line. The Enerbase 3 suggested retail price of \$1.89. All other 4 customers at that point were \$1.79, a difference of 5 ten cents per -- per bottle. A profit of 64 cents 6 per bottle, a gross margin of 34.1 percent. 7 Twenty-four is the number of bottles per case, per 8 raw hard case. 9 Q. Do you know whether this matrix of pricing 10 that appears in 147 through 150 was actually 11 presented to Enerbase? 12 A. I don't know that, but I think it was. 13 Q. Okay. Mr. Hillestad is the -- was the 14 person who was on the point? 15 A. Yes. 16 Q. Okay. Have you had since Enerbase -- 17 strike that. When did Northern Bottling begin to 18 sell Pepsi beverage products to Enerbase once again? 19 A. I believe it was April of 2016, but I'm 20 not positive without checking. 21 Q. And since Northern is back into the 22 Enerbase accounts -- stores rather, has it imposed 23 any shelf space requirements on Enerbase with 24 respect to the amount of Northern Bottling beverage 25 products that it sells in those stores?</p>	<p style="text-align: right;">85</p> <p>1 A. I do not know the answer to that. That 2 would be an agreement that Todd worked out with 3 those customers. All I know is that they're buying 4 product. I'm going to bet that we have more space 5 than we had prior. I see them running more 6 promotions than they used to run. 7 Q. Let's focus on my question, if you can. 8 A. Okay. 9 MR. RAGAIN: Object to the statement. Go 10 ahead. 11 Q. (MR. QUINN CONTINUING) Do you know, one 12 way or another, whether or not Enerbase has any 13 shelf space requirements from Northern Bottling in 14 order to sell its products, Northern Bottling's 15 products in Enerbase stores? It's a yes or no 16 answer, whether you know. 17 A. I think I said, no, I'm not aware of any. 18 Q. Okay. That's why I wanted that answer. 19 A. Thank you. 20 Q. You'll have plenty of time, if Mr. Ragain 21 asks you questions, if there's something you want to 22 amplify or explain -- 23 A. Okay. 24 Q. -- and he'll be happy to do, but I'd like 25 an answer to my question.</p>

<p style="text-align: right;">86</p> <p>1 MR. RAGAIN: Object to the statement of</p> <p>2 counsel and ask that it be stricken.</p> <p>3 Q. (MR. QUINN CONTINUING) Let me ask the --</p> <p>4 let me ask you this question: Since April of 2016,</p> <p>5 do you know whether Northern Bottling has made any</p> <p>6 other mistakes in terms of its handling the Enerbase</p> <p>7 account?</p> <p>8 <b>A. Since April of 2016 have -- I'm not aware</b></p> <p>9 <b>of any mistakes that we may have made with that</b></p> <p>10 <b>account.</b></p> <p>11 Q. Do you recall receiving an email where you</p> <p>12 were cc'd from Mr. Hillestad in which he was</p> <p>13 forwarding an email from Stuart Carlson of Enerbase</p> <p>14 complaining about problems with pricing and</p> <p>15 invoicing of products in July 2016?</p> <p>16 <b>A. I don't recall that.</b></p> <p>17 MR. QUINN: Let me ask the court reporter</p> <p>18 to mark as Peterson Deposition Exhibit 1 group</p> <p>19 exhibit with Bates numbers NB BP 0001370 through</p> <p>20 1372.</p> <p>21 THE WITNESS: Are we going to be referring</p> <p>22 back to these?</p> <p>23 Q. (MR. QUINN CONTINUING) I think you can</p> <p>24 just put them in a pile by the side.</p> <p>25 ///</p>	<p style="text-align: right;">88</p> <p>1 Q. Do you recall ever saying anything to</p> <p>2 Mr. Hillestad about not screwing up with respect to</p> <p>3 this particular account because of all the problems</p> <p>4 that had occurred in the recent past?</p> <p>5 <b>A. I don't recall saying anything</b></p> <p>6 <b>specifically. I'm sure that it was something that</b></p> <p>7 <b>we would have talked about, though, trying to</b></p> <p>8 <b>execute as flawlessly as we can, which is what we do</b></p> <p>9 <b>with most customers.</b></p> <p>10 Q. Right. Right. But my question really is,</p> <p>11 do you have any specific recollection --</p> <p>12 <b>A. No, I do not.</b></p> <p>13 Q. -- of getting involved with this</p> <p>14 particular problem with Enerbase?</p> <p>15 <b>A. Other than inputting the price, I do not</b></p> <p>16 <b>recall anything.</b></p> <p>17 Q. That's what I'd like you to stick to --</p> <p>18 <b>A. Okay.</b></p> <p>19 Q. -- what you can recall that you did or you</p> <p>20 didn't --</p> <p>21 <b>A. Okay.</b></p> <p>22 Q. -- as opposed to what you think might have</p> <p>23 happened.</p> <p>24 <b>A. Okay.</b></p> <p>25 Q. Okay. Was it your understanding, once</p>
<p style="text-align: right;">87</p> <p>1 (Deposition Exhibit 1 was marked for</p> <p>2 identification.)</p> <p>3 Q. (MR. QUINN CONTINUING) Take a look at</p> <p>4 this document and tell me when you've had a chance</p> <p>5 to review it and then also, if you can, tell me</p> <p>6 whether that refreshes your recollection at all</p> <p>7 regarding issues that Enerbase had with Northern</p> <p>8 Bottling's pricing and promotion schedule.</p> <p>9 <b>A. (Witness reviews document.) Okay. I've</b></p> <p>10 <b>looked at it.</b></p> <p>11 Q. Okay. Did you receive a copy of an email</p> <p>12 from Todd Hillestad on or about July 28, 2016 where</p> <p>13 he was forwarding the email from Stuart Carlson</p> <p>14 complaining about the promotional pricing and</p> <p>15 invoicing that Northern Bottling had done with</p> <p>16 respect to Enerbase?</p> <p>17 <b>A. I must have gotten it.</b></p> <p>18 Q. Do you recall getting involved in any way</p> <p>19 in trying to address the customer's concerns?</p> <p>20 <b>A. I'm sure I would have.</b></p> <p>21 Q. What do you recall doing?</p> <p>22 <b>A. I don't recall anything.</b></p> <p>23 Q. Why do you say you're sure you would have?</p> <p>24 <b>A. Because a lot of the pricing is input by</b></p> <p>25 <b>me, but I don't recall what the issue was.</b></p>	<p style="text-align: right;">89</p> <p>1 Northern Bottling got back into the Enerbase account</p> <p>2 in April of 2016, that it was on probation from the</p> <p>3 standpoint or the viewpoint of Enerbase?</p> <p>4 <b>A. I don't recall and I don't recall that</b></p> <p>5 <b>word ever being used.</b></p> <p>6 Q. Okay. Well, in the summer of 2016, was it</p> <p>7 your belief that Northern Bottling had to be on its</p> <p>8 toes, so to speak --</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. -- to make sure that this customer was</p> <p>11 being served well?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. So the followup which Mr. Carlson was</p> <p>14 describing was certainly disappointing; was it not?</p> <p>15 <b>A. Yes, it was.</b></p> <p>16 Q. Quick question. On this particular</p> <p>17 exhibit there's a reference to Sedona Bottling</p> <p>18 Company, a logo?</p> <p>19 <b>A. Mm-hmm.</b></p> <p>20 Q. That's -- is that an affiliated company to</p> <p>21 Northern?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. It's one that's started by Mr. Gokey's</p> <p>24 daughter?</p> <p>25 <b>A. Yes, Mr. Gokey, Langer and his daughter.</b></p>

<p style="text-align: right;">90</p> <p>1 Q. And his daughter. And it's a water</p> <p>2 company?</p> <p>3 A. Yes.</p> <p>4 Q. Does that appear with all the logos of</p> <p>5 Northern Bottling on correspondence or emails now,</p> <p>6 to the best of you your knowledge?</p> <p>7 A. I believe it only is on the admin</p> <p>8 department as they're administering for those</p> <p>9 companies.</p> <p>10 Q. Oh, for both of them?</p> <p>11 A. Mm-hmm. Yes.</p> <p>12 Q. Envision is also a customer of Northern</p> <p>13 Bottling; is it not?</p> <p>14 A. Correct.</p> <p>15 Q. It's a co-op that operates four C&amp;G stores</p> <p>16 in the Rugby area?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. There was a period of time earlier</p> <p>19 in 2017 when Envision also kicked Northern Bottling</p> <p>20 out of its stores?</p> <p>21 A. Actually, I believe it started in</p> <p>22 December, mid December.</p> <p>23 Q. Of 2016?</p> <p>24 A. Is my recollection, yes.</p> <p>25 Q. And continued for a period of several</p>	<p style="text-align: right;">92</p> <p>1 before that if that is the date.</p> <p>2 Q. What did -- what did -- do you remember</p> <p>3 whether it was Mr. Hillestad or Mr. Brezden?</p> <p>4 A. I'm sorry. I don't.</p> <p>5 Q. Okay. What do you recall either one of</p> <p>6 them saying to you about the Envision situation?</p> <p>7 A. My recollection is that they were unhappy</p> <p>8 with the number of promotions and the frequency of</p> <p>9 the promotions that we were running was the largest</p> <p>10 issue.</p> <p>11 Q. Do you recall that Envision also was</p> <p>12 unhappy with the shelf space requirement of Northern</p> <p>13 Bottling's CDA programs for convenience and gas</p> <p>14 stores?</p> <p>15 A. I believe that was one of the issues as</p> <p>16 well. I think more specifically it was one</p> <p>17 particular manager and the others stood with him.</p> <p>18 Q. Do you know who the general manager is of</p> <p>19 Envision?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Steven Dockter?</p> <p>22 A. That seems right.</p> <p>23 Q. Have you ever met Mr. Dockter?</p> <p>24 A. No, I have not.</p> <p>25 Q. Now, when you learned that Envision was</p>
<p style="text-align: right;">91</p> <p>1 months?</p> <p>2 A. A couple of months, yeah.</p> <p>3 Q. What was -- were you involved at all in</p> <p>4 dealing with the Envision decision to stop buying</p> <p>5 any product at all from Northern Bottling?</p> <p>6 A. Was I involved in the decision? I think I</p> <p>7 was informed of the decision and I think we had a</p> <p>8 discussion and went back to present our program in a</p> <p>9 different way --</p> <p>10 Q. Who was it --</p> <p>11 A. -- if I remember right.</p> <p>12 Q. Who was it at Northern Bottling who</p> <p>13 informed you of Envision's decision not to purchase</p> <p>14 product from Northern?</p> <p>15 A. I don't remember. It was either Todd or</p> <p>16 Troy.</p> <p>17 Q. Troy Brezden --</p> <p>18 A. Yes, either Todd or Troy.</p> <p>19 Q. -- or Troy Hillestad?</p> <p>20 A. Yeah, either one of them.</p> <p>21 Q. Can you -- can you tell us when you</p> <p>22 learned of that Envision decision from either</p> <p>23 Mr. Hillestad or Mr. Brezlen -- Brezden, rather?</p> <p>24 A. For some reason December 16th sticks in my</p> <p>25 mind. I'm not sure why, but it would have been days</p>	<p style="text-align: right;">93</p> <p>1 unhappy enough with Northern Bottling to stop doing</p> <p>2 business altogether, did you personally make any</p> <p>3 effort to get involved in communications with</p> <p>4 Envision?</p> <p>5 A. Not directly. Although, I think it was</p> <p>6 in -- maybe in February Larry Bowers, our FDM from</p> <p>7 Pepsi and Liz Van Houten, who I think is their</p> <p>8 transshipping manager, the three of us went over and</p> <p>9 we were going to have a conversation with the store</p> <p>10 manager, and in order to give Larry and Liz a good,</p> <p>11 fair look at what was going on, I believe I just</p> <p>12 introduced them and then left the office and let</p> <p>13 them visit privately.</p> <p>14 Q. With Mr. Dockter or with a store manager?</p> <p>15 A. No, with Bill. Bill, Bill, Bill, and I</p> <p>16 can't think of his last name at the moment.</p> <p>17 Q. Okay. Other than that visit with the two</p> <p>18 PepsiCo representatives, who were there to try to</p> <p>19 help get -- strike that.</p> <p>20 Those two representatives, Mr. Bowers and</p> <p>21 Ms. Van Houten, were visiting the Envision stores to</p> <p>22 try to help Northern get back into that account;</p> <p>23 right?</p> <p>24 A. Well, they -- they were there to see if</p> <p>25 they could help in any way, so, yes.</p>

<p style="text-align: right;">94</p> <p>1 Q. Okay. Other than that instance where you 2 accompanied them to Envision, did you make any 3 effort personally to reach out to the general 4 manager, your counterpart, at Envision?</p> <p>5 <b>A. That's not my role, so, no, I did not.</b></p> <p>6 Q. Okay. Now, Northern is once again selling 7 beverage products in the Envision stores; isn't that 8 right?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And Envision does not have a contract, 11 written contract with Northern; does it?</p> <p>12 <b>A. It does not.</b></p> <p>13 Q. What did Northern do with respect to the 14 issue of shelf space requirements in order to 15 convince Envision to let it begin selling product 16 again?</p> <p>17 <b>A. I think the decision was to start selling 18 product so that we can be in there communicating 19 with them on a regular basis and displaying to them 20 to them our execution.</b></p> <p>21 Q. And is it your understanding that Northern 22 is on probation, if you will, with Envision right 23 now? In other words, a tryout to see whether or not 24 the relationship can be improved over what it was 25 before Envision kicked Northern out of the account?</p>	<p style="text-align: right;">96</p> <p>1 business with Northern when?</p> <p>2 <b>A. Oh, gosh, I can't -- I can't give you a 3 date. I'm going to say spring of 2016.</b></p> <p>4 Q. '16. What do you understand to be the 5 reason for Devils Lake's decision not to purchase 6 any product from Northern at all?</p> <p>7 <b>A. I understand it to be a dispute over space 8 allocation with our competitors.</b></p> <p>9 Q. And I take it from what your answers have 10 been with respect to Envision and Enerbase, that you 11 personally have not been involved in trying to 12 resolve the dispute with Northern -- with Devils 13 Lake?</p> <p>14 <b>A. I've not been personally involved with the 15 management of Farmers Union Oil to resolve.</b></p> <p>16 Q. Okay. Have you been involved at all 17 inside Northern with respect to efforts to try to 18 resolve the dispute?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. What is it that Northern has done, to your 21 knowledge, to try to convince that former customer 22 to let Northern begin selling beverage products to 23 it again?</p> <p>24 <b>A. I know that Todd has made repeated 25 proposals and our local manager Dan Leach, who had a</b></p>
<p style="text-align: right;">95</p> <p>1 <b>A. I'm not aware that we're under probation. 2 I believe that we tried to address their issues. I 3 believe that Todd Hillestad went out and helped them 4 with their computer system so that their -- so that 5 the number of promotions that they're running and 6 looking at and doing could be done a lot easier and 7 I believe he had some success in that area.</b></p> <p>8 Q. Are you aware that Mr. Dockter has given a 9 deposition in this case?</p> <p>10 <b>A. No.</b></p> <p>11 Q. So I take you haven't read his deposition 12 or heard what he had to say about the problems that 13 Enerbase -- or that Envision had with Northern 14 Bottling; is that right?</p> <p>15 <b>A. I have not.</b></p> <p>16 Q. Do you have any reason to believe that 17 Mr. Dockter's description of the problems that 18 Envision had with Northern would in any way be 19 inaccurate or untrue?</p> <p>20 <b>A. I don't have any reason to believe that.</b></p> <p>21 Q. Now, there is another former customer of 22 Northern Bottling called Devils Lake. Do you recall 23 that?</p> <p>24 <b>A. Farmers Union Oil of Devils Lake, yes.</b></p> <p>25 Q. There you go. Devils Lake ceased doing</p>	<p style="text-align: right;">97</p> <p>1 <b>personal relationship of some type with that 2 manager -- personal -- he had a relation -- business 3 relationship with him, still calls on him regularly.</b></p> <p>4 Q. Would you agree that one of the best ways 5 to overcome problems like those that we've been 6 discussing with respect to Enerbase or Envision or 7 Devils Lake is for Northern Bottling to try to solve 8 the issues with the customer in order to reestablish 9 a good business relationship?</p> <p>10 <b>A. If I understood the question, yes, we 11 should be trying to solve the issues.</b></p> <p>12 Q. And on a business-to-business basis?</p> <p>13 MR. RAGAIN: Object to the form.</p> <p>14 THE WITNESS: I don't know what other 15 basis there would be.</p> <p>16 MR. RAGAIN: There you go.</p> <p>17 Q. (MR. QUINN CONTINUING) Well, that's what 18 I'm asking, so --</p> <p>19 <b>A. Okay. Then, yes.</b></p> <p>20 Q. -- it's a good business practice to try to 21 address a customer's concerns, issues, complaints 22 and try to solve those?</p> <p>23 <b>A. Generally, yes.</b></p> <p>24 Q. In the case of Devils Lake, has Northern 25 made any effort to change the shelf requirements or</p>

<p style="text-align: right;">98</p> <p>1 space demands in order to get back into the account?</p> <p>2 <b>A. I'm not aware of any specific changes, but</b></p> <p>3 <b>we have tried to be a little bit more flexible with</b></p> <p>4 <b>how we're approaching these issues to try and solve.</b></p> <p>5 Q. What do you mean by that?</p> <p>6 <b>A. Well, with a customer -- or with Core-Mark</b></p> <p>7 <b>delivering into our territory, it really makes our</b></p> <p>8 <b>execution a lot more difficult.</b></p> <p>9 Q. Well, let me ask you about the flexibility</p> <p>10 that Northern needs to show with its customers,</p> <p>11 Envision, Enerbase, Devils Lake?</p> <p>12 <b>A. We're not using written agreements every</b></p> <p>13 <b>single time.</b></p> <p>14 Q. Okay. And what else is Northern trying to</p> <p>15 do to be more flexible with its customers?</p> <p>16 <b>A. We're trying to work with them on</b></p> <p>17 <b>promotions, executional elements, space</b></p> <p>18 <b>requirements.</b></p> <p>19 Q. On space requirements to be a little more</p> <p>20 flexible about how many shelves have to display</p> <p>21 Northern products in order to get discounts, funding</p> <p>22 and the like?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Okay. Now, one last customer I want to</p> <p>25 ask you about, Harley's Cenex.</p>	<p style="text-align: right;">100</p> <p>1 <b>A. I don't know that we convinced the store</b></p> <p>2 <b>manager at all. I believe that Todd worked with one</b></p> <p>3 <b>of the owners, Mary Dittus.</b></p> <p>4 Q. What was her last name?</p> <p>5 <b>A. Dittus. D-i-t-t-u-s, I believe is how</b></p> <p>6 <b>it's spelled.</b></p> <p>7 Q. So Ms. Dittus decided to let Northern back</p> <p>8 in?</p> <p>9 <b>A. Yes. That's my understanding.</b></p> <p>10 Q. What were the reasons, as far as you know,</p> <p>11 that the Harley's and Cenex gave for deciding to</p> <p>12 stop purchasing beverage products from Northern in</p> <p>13 approximately December of 2016?</p> <p>14 <b>A. I don't know if I remember the exact</b></p> <p>15 <b>statements as to -- that were made at the particular</b></p> <p>16 <b>time. I do know that later on it was revealed that</b></p> <p>17 <b>our salesman was not performing fairly well and he</b></p> <p>18 <b>had been a former employee of Harley's Cenex and I</b></p> <p>19 <b>think he was just a little bit sloppy in his</b></p> <p>20 <b>approach because of his familiarity with the people</b></p> <p>21 <b>there.</b></p> <p>22 Q. What was the name of that salesman --</p> <p>23 Garret?</p> <p>24 <b>A. Yes, Garret Common. Thank you.</b></p> <p>25 Q. And did Northern subsequently fire Garret?</p>
<p style="text-align: right;">99</p> <p>1 <b>A. Okay.</b></p> <p>2 Q. That's a single store, I believe; right?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. That's also a store where the owner chose</p> <p>5 at some point not to purchase any product at all</p> <p>6 from Northern; isn't that right? Isn't that right?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And Northern is now back in that account?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. When did Northern get kicked out and when</p> <p>11 did it get back in?</p> <p>12 <b>A. I couldn't tell you without checking.</b></p> <p>13 <b>Late December, probably, of 2016 and early 2017.</b></p> <p>14 <b>And, just for the record, I believe that the actual</b></p> <p>15 <b>store manager was a former Coca-Cola employee so I</b></p> <p>16 <b>believe there was some rub there.</b></p> <p>17 Q. Okay. How so?</p> <p>18 <b>A. Well, I think that she thought her -- that</b></p> <p>19 <b>Coca-Cola products were better and that there was</b></p> <p>20 <b>little use for Pepsi products.</b></p> <p>21 Q. Is that person the store manager today?</p> <p>22 <b>A. I believe she still is.</b></p> <p>23 Q. Okay. So can you tell us what Northern</p> <p>24 did to convince her that Northern's Pepsi products</p> <p>25 ought to have a place in her store?</p>	<p style="text-align: right;">101</p> <p>1 <b>A. I believe he was terminated.</b></p> <p>2 Q. Okay. In part as a result of the poor</p> <p>3 service that he provided to this Harley's Cenex</p> <p>4 store?</p> <p>5 <b>A. In part.</b></p> <p>6 Q. Who is servicing that account now?</p> <p>7 <b>A. I'm not positive. It's either Brock</b></p> <p>8 <b>Francis or Chris Baischer, I believe.</b></p> <p>9 Q. To your knowledge, have you or someone</p> <p>10 else in the senior sales management team, given</p> <p>11 Mr. Francis directions to be especially careful</p> <p>12 about providing good service to that store?</p> <p>13 <b>A. I have not, and I'm assuming that Troy and</b></p> <p>14 <b>his supervisor have.</b></p> <p>15 MR. QUINN: Let's take a short break, if</p> <p>16 that's okay with you.</p> <p>17 THE WITNESS: Sure.</p> <p>18 MR. EMINETH: We'll be off the video and</p> <p>19 off the record at 11:37 a.m.</p> <p>20 (Recess was taken.)</p> <p>21 MR. EMINETH: We are back on the video,</p> <p>22 back on the record at 12:50 p.m.</p> <p>23 Q. (MR. QUINN CONTINUING) Mr. Peterson, this</p> <p>24 morning we were talking about the Enerbase</p> <p>25 situation, if you recall.</p>

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1 **A. (Nods.)**

2 Q. Is it your recollection that at some point  
3 in mid February, around February 15th or so,  
4 Enerbase -- that was when Enerbase notified Northern  
5 Bottling that it would not -- "it" meaning Enerbase  
6 would not purchase beverage products anymore from  
7 Northern?

8 **A. That's how I remember it, yep.**

9 Q. And is it your understanding that Enerbase  
10 then began to -- at some point after that date began  
11 to purchase Pepsi products from Core-Mark, a company  
12 called Core-Mark?

13 **A. At or about that date. They might have  
14 had some on the way when they said stop delivering.**

15 Q. Okay. When -- what did you know at that  
16 point in time about Core-Mark as a company?

17 **A. Well, we had started to track which of our  
18 customers were using which supplier, and Core-Mark,  
19 if I remember right, was making some pretty serious  
20 inroads against their competitors in the market, and  
21 the only other thing I think I might have known was  
22 that they used to be a rather large distributor of  
23 Gatorade and when PepsiCo gave distribution rights  
24 of Gatorade to the bottlers for certain channels, I  
25 believe that Core-Mark had a serious hit to their**

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1 **revenues.**

2 Q. Because PepsiCo --

3 **A. Reduction.**

4 Q. Because PepsiCo --

5 **A. Because of the change.**

6 Q. -- transferred those Gatorade rights, or  
7 at least some of them, from Core-Mark to independent  
8 bottlers like Northern?

9 **A. And their own bottlers.**

10 Q. But both; right?

11 **A. Yes, but both, yes.**

12 Q. What did you understand to be Core-Mark's  
13 business model? And, again, my time frame for these  
14 questions is going to be around February of 2015  
15 when Enerbase made its decision to -- to stop buying  
16 product from Northern.

17 **A. What was their business model?**

18 Q. Yeah, what was their business, the nature  
19 of Core-Mark's business?

20 **A. I thought they were just a wholesaler.**

21 Q. A distributor of a variety of products to  
22 convenience and gas stores?

23 **A. Yes.**

24 Q. Like Enerbases, outlets?

25 **A. Enerbases, yes.**

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1 Q. Did you -- how did you learn that Enerbase  
2 was planning to purchase Pepsi beverage products  
3 from Core-Mark?

4 **A. From Todd.**

5 Q. Todd Hillestad?

6 **A. Todd Hillestad, yes.**

7 Q. Do you know how he found out?

8 **A. I believe he received a phone call from  
9 Shawna, I think you pronounce it Chilcoat.**

10 Q. C-h-i-l-c-o-a-t?

11 **A. Yes.**

12 Q. So when Todd told you that he believed  
13 that Core-Mark would supply Pepsi products, did he  
14 tell you anything else about which products would be  
15 supplied?

16 **A. I don't recollect that.**

17 Q. Did you learn at any point -- let's take  
18 it from mid February through approximately March or  
19 April of 2015 -- what Pepsi beverage products or  
20 what beverage products the Enerbase stores were  
21 purchasing from Core-Mark?

22 **A. It must be after lunch. Could you repeat  
23 that, Tom, please?**

24 Q. Sure. Time frame for my question is --

25 **A. Yes. Yep, got that.**

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1 Q. -- the first two months after you learned  
2 that Enerbase was going to buy product from  
3 Core-Mark. So my question is, did you learn in that  
4 time frame which beverage products Enerbase was  
5 purchasing from Core-Mark?

6 **A. Yes.**

7 Q. And which ones?

8 **A. Well, they were purchasing Pepsi, Diet  
9 Pepsi, Mountain Dew, Diet Dew, Dr. Pepper. I  
10 believe some Diet Dr. Pepper. I think they were  
11 buying it in two different packages. And I believe  
12 at some point some Starbucks items showed up. I  
13 believe that some take-home packaging, 12-pack cans  
14 showed up.**

15 Q. Do you remember which brands?

16 **A. Same brands, basically. And then I  
17 believe they had one or two of the ten Kickstart  
18 SKUs, which really surprised us, that they were able  
19 to get that product.**

20 Q. And SKUs that's S-K-U?

21 **A. Yeah, stock keeping unit.**

22 Q. Did -- did you participate in any effort  
23 at Northern to try to investigate where Core-Mark  
24 was obtaining these beverage products?

25 **A. No.**

<p style="text-align: right;">106</p> <p>1 Q. Was there someone at Northern who had that 2 responsibility?</p> <p>3 A. No one really has that responsibility 4 because, for one, the customer had asked us to not 5 be constantly in the stores, so we weren't -- we 6 were honoring that request, and the investigative 7 firm that Pepsi hires determines -- they go and they 8 count the cases. They take the codes and then, of 9 course, as you know, there's a fine and I believe 10 that the investigative fee is added to what the -- I 11 don't know. It's something.</p> <p>12 Q. Let me ask a follow-up question on that 13 point that may aid your recollection. Is it your 14 understanding that the way the PepsiCo transshipment 15 enforcement program works, is that a bottler in 16 whose territory Pepsi beverage products appear that 17 weren't manufactured by that bottler can file a 18 complaint with -- at this particular time it would 19 be Darin Morris; right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And then Mr. Morris, who was in 22 2015 administering the transshipment enforcement 23 program, would contact an investigative firm --</p> <p>24 A. Yes.</p> <p>25 Q. -- that went into the stores where a</p>	<p style="text-align: right;">108</p> <p>1 Q. And what answer did you get from 2 Mr. Morris?</p> <p>3 A. The answer we got from whoever was, yes, 4 we can do that.</p> <p>5 Q. So then PepsiCo assigned an investigative 6 form -- firm, rather, to check the Enerbase stores 7 on a regular basis to determine if there were 8 transhipped product on the shelves in the Enerbase 9 stores?</p> <p>10 A. Correct.</p> <p>11 Q. Then from the perspective of Northern 12 Bottling, what happened after the investigative 13 firms reported back to Mr. Morris and the PTEP? 14 Fines were assessed and paid to Northern?</p> <p>15 A. Yes, and codes were recorded of where the 16 product was produced and I believe the first stuff 17 that we saw came from Florida, which is a long ways 18 to ship pop.</p> <p>19 Q. What information in connection with the 20 investigative process did Northern receive from 21 PepsiCo?</p> <p>22 A. Well, in some cases we received an invoice 23 with a credit amount on it, and in --</p> <p>24 Q. And that represented the amount of fine 25 that was assessed?</p>
<p style="text-align: right;">107</p> <p>1 bottler, in this case Northern, had discovered 2 product that it did not sell to Enerbase to 3 determine what production codes appeared on those 4 products?</p> <p>5 A. Yes, although just as a clarification, we 6 didn't discover this. We were informed by the 7 account they were going to do it, so --</p> <p>8 Q. Okay. So once you were informed about it, 9 that's when -- did you inform Mr. Morris?</p> <p>10 A. I don't recall. I may have done the first 11 PTEP, and I can't tell you what PTEP stands for. 12 It's Pepsi's acronym.</p> <p>13 Q. PepsiCo Transshipment Enforcement Program?</p> <p>14 A. Okay.</p> <p>15 Q. So we'll use PTEP as a shorthand phrase 16 for that.</p> <p>17 A. Okay.</p> <p>18 Q. So continue with your answer.</p> <p>19 A. Well, it may have been me that filled out 20 the first one and then I spoke with somebody 21 there -- it might have been me. We spoke with 22 somebody and said, look, if this is ongoing, are we 23 going to have to file additional reports or because 24 it's ongoing, can you just investigate on some 25 frequency that is appropriate.</p>	<p style="text-align: right;">109</p> <p>1 A. The net fine, yep. And in some cases -- 2 and really when I looked, I was quite surprised we 3 didn't receive more, but there would be maybe a 4 spreadsheet-type document that had quantity and code 5 and brand and package on it.</p> <p>6 Q. Did you have an understanding as to how 7 those figures, the quantity code, brand were 8 determined on that spreadsheet?</p> <p>9 A. I don't understand how they came up with 10 the quantities, because -- I don't know. I don't 11 know how they do that.</p> <p>12 Q. Okay. And did you ever ask Mr. Morris or 13 anyone at Pepsi how the quantities were determined 14 as a result of the investigation by the 15 independent --</p> <p>16 A. No, I did not.</p> <p>17 Q. -- investigating firm? You just have to 18 wait until I finish so that the court reporter --</p> <p>19 A. Sorry.</p> <p>20 Q. You did not ever ask Mr. Morris about that 21 subject?</p> <p>22 A. I did not.</p> <p>23 Q. Now, I believe you indicated that for the 24 initial contact, it may have been you who contacted 25 Mr. Morris about this transshipment issue?</p>

<p style="text-align: right;">110</p> <p>1       <b>A. It may have been, yes.</b></p> <p>2       Q. Did you delegate that responsibility to</p> <p>3 someone else at Northern Bottling after the initial</p> <p>4 contact?</p> <p>5       <b>A. I don't -- I believe that we may have</b></p> <p>6 <b>filed -- I know we filed one. We may have filed</b></p> <p>7 <b>two, but I don't -- you know, it was clear that it</b></p> <p>8 <b>was going to be ongoing so we just asked them to</b></p> <p>9 <b>investigate appropriately, so I'm not sure how many</b></p> <p>10 <b>claims were filed, Tom.</b></p> <p>11       Q. Okay. Is it your understanding that when</p> <p>12 a bottler such as Northern files a transshipment</p> <p>13 claim and the investigative firm goes out and does</p> <p>14 not find any evidence of transshipment, that the</p> <p>15 complaining bottler must then pay the cost of</p> <p>16 investigation?</p> <p>17       <b>A. That's my understanding.</b></p> <p>18       Q. Has Northern in the past had any</p> <p>19 experiences with other independent bottlers where</p> <p>20 transshipped product appears in Northern's territory</p> <p>21 and Northern did not file a transshipment claim?</p> <p>22       <b>A. I don't recall that. I don't believe it</b></p> <p>23 <b>ever happened.</b></p> <p>24       Q. Okay. To your knowledge, from and after</p> <p>25 the time that notice was given to Mr. Morris at</p>	<p style="text-align: right;">112</p> <p>1       <b>A. No, I do not.</b></p> <p>2       Q. Do you have any --</p> <p>3       <b>A. A long time would be my guess.</b></p> <p>4       Q. Well before the situation with Enerbase?</p> <p>5       <b>A. Yes.</b></p> <p>6       Q. Now, did you have a good working</p> <p>7 relationship with Mr. Morris?</p> <p>8       <b>A. I would -- I wouldn't characterize it as a</b></p> <p>9 <b>working relationship. I mean, I sent him an email</b></p> <p>10 <b>with a claim and it was handled from there.</b></p> <p>11       Q. Okay. Was he responsive to the claim?</p> <p>12       <b>A. Yes. I don't believe I ever spoke to him.</b></p> <p>13 <b>I think all communication was by email.</b></p> <p>14       Q. I see.</p> <p>15       <b>A. Something like that.</b></p> <p>16       Q. Now, you know that Mr. Morris went on to a</p> <p>17 different position at PepsiCo and a woman by the</p> <p>18 name of Liz Van Houten took his place?</p> <p>19       <b>A. Yes.</b></p> <p>20       Q. In fact, I think you probably met</p> <p>21 Ms. Van Houten when she and Mr. Bowers went with you</p> <p>22 up to the Rugby stores?</p> <p>23       <b>A. Yes. We also went to Devils Lake.</b></p> <p>24       Q. And Devils Lake. Do you --</p> <p>25       <b>A. Towner and Leeds.</b></p>
<p style="text-align: right;">111</p> <p>1       PepsiCo to trigger an investigation of transshipment</p> <p>2 into the Enerbase stores, was there ever a point</p> <p>3 where Pepsi did not pay the fines based upon the</p> <p>4 number of transshipped cases that the investigative</p> <p>5 firm determined had occurred?</p> <p>6       <b>A. To the best of my knowledge, Pepsi has</b></p> <p>7 <b>paid everything up to -- you know, they are usually</b></p> <p>8 <b>60, 90 days behind the occurrence, but the last time</b></p> <p>9 <b>I looked they were -- were all up to date, it</b></p> <p>10 <b>appeared.</b></p> <p>11       Q. And, in general, is the payment in the</p> <p>12 form of a credit against amounts that Northern</p> <p>13 Bottling may owe to PepsiCo for the purchase of</p> <p>14 concentrate or other items like that?</p> <p>15       <b>A. Yes, but we don't purchase concentrate</b></p> <p>16 <b>from them, but other items on our account, yes.</b></p> <p>17       Q. Okay. Right. You don't purchase</p> <p>18 concentrate because Northern Bottling buys its</p> <p>19 beverage products from Wis-Pak?</p> <p>20       <b>A. Our co-op, which we're an owner of, buys</b></p> <p>21 <b>the concentrate.</b></p> <p>22       Q. Do you know for how long this system of</p> <p>23 investigation and of transshipment, assessment of</p> <p>24 fines and payment of fines has been in place at</p> <p>25 PepsiCo?</p>	<p style="text-align: right;">113</p> <p>1       Q. Okay. Do you -- all those places?</p> <p>2       <b>A. Yes.</b></p> <p>3       Q. And both Mr. Bowers and Ms. Van Santen --</p> <p>4 Van Houten went with you to all those spots?</p> <p>5       <b>A. Yes.</b></p> <p>6       Q. Based on your contacts with</p> <p>7 Ms. Van Houten, was she also responsive whenever</p> <p>8 Northern Bottling files a transshipment claim or</p> <p>9 issues or reports the transshipment may be</p> <p>10 occurring?</p> <p>11       <b>A. Yes, within whatever her parameters are, I</b></p> <p>12 <b>think she does everything she can.</b></p> <p>13       Q. Now, getting back to the Enerbase</p> <p>14 situation, did you ever come to learn what methods</p> <p>15 Core-Mark was using to obtain the beverage products</p> <p>16 that it sold to Enerbase?</p> <p>17       <b>A. I heard that they were purchasing it from</b></p> <p>18 <b>somebody -- some company.</b></p> <p>19       Q. Does the name Distinct Trading ring a</p> <p>20 bell?</p> <p>21       <b>A. That rings a bell.</b></p> <p>22       Q. What do you know about the nature of</p> <p>23 Distinct Trading's business?</p> <p>24       <b>A. What do I know? Well, I believe that they</b></p> <p>25 <b>have no warehouse. They have no distribution</b></p>

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1 facility and that they are simply handling the  
2 paperwork to procure.

3 Q. Have you heard the term "diverter" used to  
4 describe companies like Distinct?

5 A. Well, I've heard the term, but I've never  
6 understood what it really is.

7 Q. What's a better term -- broker?

8 A. Why would they be diverting product?  
9 That's the part -- in my mind, I just can't put that  
10 together.

11 Q. Okay. Fair enough. We won't use that  
12 term. If it's not one that you're familiar with or  
13 comfortable, we don't need to use that.

14 Do you have any personal knowledge  
15 regarding any steps that PepsiCo has taken with  
16 respect to trying to prevent Core-Mark from  
17 obtaining Pepsi products?

18 A. No.

19 Q. Now let me ask some of the same questions  
20 about the situation with Envision.

21 A. Okay.

22 Q. Did you report to someone at PepsiCo,  
23 Ms. Van Houten or someone else, that Envision had  
24 begun to purchase product from Core-Mark?

25 A. I did not. Someone else in the

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1 organization did.

2 Q. In the Northern Bottling organization?

3 A. Yes.

4 Q. Do you know who that was?

5 A. I'm thinking it was either Todd Hillestad  
6 or Janelle Vetter might have sent the claim in.

7 Q. What's Ms. Vetter's position in the  
8 company?

9 A. She's an accountant.

10 Q. Okay. And do you know what happened after  
11 Mr. Hillestad or Ms. Vetter reported to  
12 Ms. Van Houten that Envision was going to purchase  
13 product from Core-Mark?

14 A. I believe we repeated the same pattern.  
15 They sent an investigator out, I think pretty  
16 promptly, and then it was set up on a please review  
17 appropriately because it's going to be ongoing.

18 Q. So, in other words, you did not have to  
19 keep -- Northern Bottling did not have to keep  
20 filing complaints on a weekly basis, it was on a --  
21 sort of a continuous investigative process?

22 A. Until we tell them to stop.

23 Q. Just to back up for a second to Enerbase,  
24 there did come a point in time when Northern  
25 Bottling said to PepsiCo stop the investigations;

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1 wasn't there?

2 A. Yeah, and I believe it was after -- that's  
3 how we found out that we had to continue to pay even  
4 if there was no transshipped product here, that it  
5 was up to us to tell them to stop investigating.

6 Q. Okay. Otherwise, they'd keep sending the  
7 investigators out?

8 A. Yes. Yep.

9 Q. And so when you got an a bill for  
10 investigative cost, you said, wait a minute, time to  
11 stop --

12 A. Yes.

13 Q. -- is that right?

14 A. Something kind of like that, as I  
15 remember.

16 Q. So then now at Envision you said let's put  
17 this on continuous investigation and it was your  
18 experience that PepsiCo had the investigators come  
19 out, if there was transshipped product detected,  
20 then fines were assessed and paid to Northern; is  
21 that right?

22 A. Correct.

23 Q. Do you recall when it was that Northern  
24 told PepsiCo, stop the investigations at the  
25 Envision stores?

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1 A. I don't recall when, but it would have  
2 been at some point when Envision said, okay, start  
3 bringing your product in. This time we were pretty  
4 prompt.

5 Q. Sometime in the spring of 2017?

6 A. Yes.

7 Q. And let me ask you the same questions  
8 about the Devils Lake stores. How many stores are  
9 there in Devils Lake that are at issue in this  
10 transshipment?

11 A. I believe there's three.

12 Q. Is there a name that you use? Farmers  
13 Union of Devils Lake, is that the name you use?

14 A. You know, that's the name that we group  
15 them under and -- you know, but, typically, they  
16 have a Cenex sign out front and that kind of becomes  
17 the street name, if you will, for them.

18 Q. Okay. So do you recall when it was that  
19 Northern notified PepsiCo that it needed to send the  
20 investigative firm out to check for transshipment at  
21 Devils Lake?

22 A. I do not recall when this was.

23 Q. Was it sometime in late 2016 or early  
24 2017?

25 A. I think it was late 2016, but I'd have to

<p style="text-align: right;">118</p> <p>1 <b>check.</b></p> <p>2 Q. And was it your experience that once the</p> <p>3 call went to PepsiCo, that the investigators came</p> <p>4 and if product -- transshipped product was</p> <p>5 discovered, that fines were assessed and paid to</p> <p>6 Northern?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And is that investigation of transshipment</p> <p>9 ongoing at the Devils Lake stores?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Because Devils Lake has not let Northern</p> <p>12 back in?</p> <p>13 <b>A. That is correct.</b></p> <p>14 Q. Does Northern have other stores in the</p> <p>15 Devils Lake area that it serves?</p> <p>16 <b>A. Yes. Yep.</b></p> <p>17 Q. How many?</p> <p>18 <b>A. How many? I think -- well, within Devils</b></p> <p>19 <b>Lake proper, there are -- I think there's three</b></p> <p>20 <b>other and then in the area I think there's a total</b></p> <p>21 <b>of -- counting those three, there's seven. I'm</b></p> <p>22 <b>working off of what may or may not be correct.</b></p> <p>23 Q. How about in the Envision market area,</p> <p>24 Rugby, Towner, and Leeds, are there other customers</p> <p>25 of Northern in that area?</p>	<p style="text-align: right;">120</p> <p>1 transshipment and paid those amounts to Northern?</p> <p>2 <b>A. Correct.</b></p> <p>3 Q. Okay. And that would have been on</p> <p>4 Ms. Van Houten's watch; right?</p> <p>5 <b>A. Yes, I believe so.</b></p> <p>6 Q. And the same is true with the Devils Lake</p> <p>7 stores and the Envision stores?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. Mr. Peterson, do you participate at all on</p> <p>10 behalf of Northern in independent bottling --</p> <p>11 bottler association meetings?</p> <p>12 <b>A. No, sir.</b></p> <p>13 Q. That's not within your purview or job</p> <p>14 responsibilities?</p> <p>15 <b>A. I feel like I have enough on my plate.</b></p> <p>16 <b>That's correct.</b></p> <p>17 Q. Is that what Mr. Gokey does --</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. -- for the company?</p> <p>20 <b>A. It's one of the things he does.</b></p> <p>21 Q. Well, of course. I don't mean to say it's</p> <p>22 the only thing that he does. Have you ever heard of</p> <p>23 something called a Blue System Council?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. What do you understand that to be?</p>
<p style="text-align: right;">119</p> <p>1 <b>A. There are customers of Towner and Leeds,</b></p> <p>2 <b>but none in that channel of distribution. And in</b></p> <p>3 <b>Rugby there are other customers and I believe one in</b></p> <p>4 <b>that channel of distribution.</b></p> <p>5 Q. Meaning the convenience and gas channel?</p> <p>6 <b>A. Correct. Yes.</b></p> <p>7 Q. Are the other customers in the retail</p> <p>8 channel?</p> <p>9 <b>A. Yeah, retail and restaurant, bar,</b></p> <p>10 <b>workplace.</b></p> <p>11 Q. Okay. I do want to sort of close the loop</p> <p>12 on these customers where transshipment has occurred,</p> <p>13 so let me ask you the same questions about the</p> <p>14 Cenex, Harley Cenex. That's the one store --</p> <p>15 <b>A. (Nods.)</b></p> <p>16 Q. -- where I believe Mary is the owner?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Okay. When was it that Northern notified</p> <p>19 PepsiCo that it believed that transshipped Pepsi</p> <p>20 products were appearing in that Cenex?</p> <p>21 <b>A. I believe it was mid to late December</b></p> <p>22 <b>2016.</b></p> <p>23 Q. And PepsiCo then called in the</p> <p>24 investigative firm and assessed fines based upon the</p> <p>25 investigative firm's findings regarding</p>	<p style="text-align: right;">121</p> <p>1 <b>A. It's a group of people that get together</b></p> <p>2 <b>to discuss some of the issues that are occurring</b></p> <p>3 <b>between -- or have occurred between PepsiCo and its</b></p> <p>4 <b>independent bottlers and I believe they think</b></p> <p>5 <b>they're looking for solutions.</b></p> <p>6 Q. The council includes both independent</p> <p>7 bottlers and PBC bottlers, PepsiCo employees?</p> <p>8 <b>A. Okay.</b></p> <p>9 Q. Let me strike that. Let me ask the</p> <p>10 question better. The Blue System Council includes</p> <p>11 employees of PepsiCo, as well as representatives of</p> <p>12 independent bottlers; isn't that right?</p> <p>13 <b>A. Correct, as far as I know.</b></p> <p>14 Q. And the idea is to have a change of views</p> <p>15 and to try to work cooperatively to find solutions</p> <p>16 to various issues that may surface in the Pepsi</p> <p>17 system?</p> <p>18 MR. RAGAIN: If you know.</p> <p>19 THE WITNESS: Well, that's what they're</p> <p>20 reporting, the reports I've seen.</p> <p>21 Q. (MR. QUINN CONTINUING) And you have seen</p> <p>22 some of the minutes of Blue System --</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. -- Council meetings?</p> <p>25 <b>A. Yes, I have.</b></p>

<p style="text-align: right;">122</p> <p>1 Q. So you know that, among other issues, one</p> <p>2 of the issues that the Blue System Council is</p> <p>3 addressing is the transshipment subject?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Have you had any occasion to talk to any</p> <p>6 of the independent bottler members of the Blue</p> <p>7 System Council to provide input on that</p> <p>8 transshipment issue?</p> <p>9 <b>A. No, I have not.</b></p> <p>10 Q. To your knowledge, has anyone from</p> <p>11 Northern Bottling done that?</p> <p>12 <b>A. I don't know that.</b></p> <p>13 Q. One way or another?</p> <p>14 <b>A. One way or another.</b></p> <p>15 Q. Do you think it's a good idea that PepsiCo</p> <p>16 has created this Blue System Council?</p> <p>17 <b>A. I'd like to see the results. Then I could</b></p> <p>18 <b>tell you whether I think it's a good idea.</b></p> <p>19 Q. But do you think it's a good idea to form</p> <p>20 a council that includes both independent bottlers</p> <p>21 and PepsiCo company members to exchange views on</p> <p>22 issues that arise in the system?</p> <p>23 <b>A. It should be, yes.</b></p> <p>24 Q. Mr. Peterson, have you been involved in</p> <p>25 any way in attempting to calculate what Northern</p>	<p style="text-align: right;">124</p> <p>1 <b>A. Then, yes.</b></p> <p>2 Q. At least we're on the same page.</p> <p>3 MR. RAGAIN: Objection.</p> <p>4 MR. QUINN: That's okay.</p> <p>5 MR. RAGAIN: That's okay --</p> <p>6 Q. (MR. QUINN CONTINUING) What you did</p> <p>7 was --</p> <p>8 MR. RAGAIN: Move to strike counsel's</p> <p>9 statement.</p> <p>10 Q. (MR. QUINN CONTINUING) What you did was,</p> <p>11 you looked at the sales history and assumed that</p> <p>12 whatever the sales history was, for example, in</p> <p>13 2014, would have been the same sales history during</p> <p>14 the period of 2015 when Northern Bottling was out of</p> <p>15 an account such as Enerbase; is that right?</p> <p>16 <b>A. I think so.</b></p> <p>17 Q. Okay. And did you do the same kind of</p> <p>18 analysis for the periods of time when Northern was</p> <p>19 out of the Envision account and the Harley Cenex</p> <p>20 account?</p> <p>21 <b>A. Yes, we followed the same pattern.</b></p> <p>22 Q. And same pattern as well with respect to</p> <p>23 the Devils Lake Cenex?</p> <p>24 <b>A. Correct.</b></p> <p>25 Q. In doing your analysis, did you make any</p>
<p style="text-align: right;">123</p> <p>1 Bottling claims to be its losses in connection with</p> <p>2 the claims in this lawsuit?</p> <p>3 <b>A. I've -- yes, I've worked with the lost</b></p> <p>4 <b>case numbers and margin --</b></p> <p>5 Q. Can you tell us --</p> <p>6 <b>A. -- gross profit.</b></p> <p>7 Q. I'm sorry. Can you tell us what you've</p> <p>8 done in that regard?</p> <p>9 <b>A. Well, I use our sales reporting tool and I</b></p> <p>10 <b>look at the time frame in question and compare it to</b></p> <p>11 <b>the same time frame prior periods. And then I</b></p> <p>12 <b>created a report -- I'm not sure what we put it</b></p> <p>13 <b>on -- that got sent as part of the discovery.</b></p> <p>14 Q. So as I understand it, in sort of</p> <p>15 calculating lost profits for accounts where</p> <p>16 transshipment has occurred, you looked at the sales</p> <p>17 pattern of Northern Bottling beverage products</p> <p>18 during periods earlier than the period of</p> <p>19 transshipping and then extrapolated whatever you</p> <p>20 found into the period of transshipping?</p> <p>21 <b>A. I don't think we extrapolated. I think we</b></p> <p>22 <b>just said this is what we sold last year in July,</b></p> <p>23 <b>for instance, we assume we would have sold</b></p> <p>24 <b>approximately the same this July.</b></p> <p>25 Q. Okay. That's what I meant.</p>	<p style="text-align: right;">125</p> <p>1 adjustment for changes in economic conditions in</p> <p>2 Northern Bottling's marketplace?</p> <p>3 <b>A. No, we did not. Some stores are up, some</b></p> <p>4 <b>are down, so I'm not a damages expert.</b></p> <p>5 Q. Okay. And I take it, then, that there</p> <p>6 wasn't any kind of a discount or reduction that you</p> <p>7 applied as a result of data that you may have had at</p> <p>8 your disposal regarding what was happening in the</p> <p>9 overall economy of Minot or other communities within</p> <p>10 Northern's territory?</p> <p>11 <b>A. No. And, like I said, some accounts were</b></p> <p>12 <b>up, some were down.</b></p> <p>13 Q. And how did you determine what accounts</p> <p>14 were up and down?</p> <p>15 <b>A. We look at our sales reporting tool.</b></p> <p>16 Q. For accounts other than the ones that</p> <p>17 were --</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. -- involved in the transshipment?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. How did you decide which accounts to use</p> <p>22 as reference points for the four accounts where</p> <p>23 Northern had been kicked out of the stores for some</p> <p>24 period of time in either 2015, 2016, or 2017?</p> <p>25 <b>A. Well, our gross view is to start with all</b></p>

<p style="text-align: right;">126</p> <p>1 <b>accounts within a particular channel and then we try</b>  2 <b>and hone in, you know, do we think these stores are</b>  3 <b>similar, these stores are dissimilar. This locale</b>  4 <b>is more comparable than another.</b>  5 Q. Did you do that type of an analysis in  6 calculating the lost profits?  7 <b>A. No.</b>  8 Q. You did not do that?  9 <b>A. No. It's just part of what we typically</b>  10 <b>do.</b>  11 MR. QUINN: Okay. Let me ask the court  12 reporter to mark as Peterson Exhibit 2 a one-page  13 document.  14 (Deposition Exhibit 2 was marked for  15 identification.)  16 Q. (MR. QUINN CONTINUING) Mr. Peterson, do  17 you recognize this document as something that you  18 prepared on or about the end of March 2017?  19 <b>A. Yes.</b>  20 Q. Okay. And you prepared this for purposes  21 of calculating what you thought to be Northern's  22 margin losses relating to the transshipments that  23 occurred in Enerbase, Devils Lake, Envision and the  24 Harley store?  25 <b>A. Correct, although I believe the correct</b></p>	<p style="text-align: right;">128</p> <p>1 about CDA programs that provided for funding of  2 various sorts that was a discount off the price that  3 a C&amp;G customer paid for beverage product from  4 Northern; right?  5 <b>A. Correct.</b>  6 Q. So net revenue would be the invoice price  7 less any funding discounts or other discounts that  8 the customer would get?  9 <b>A. Yes.</b>  10 Q. And how about cost of goods sold?  11 <b>A. That is -- that is the floor cost.</b>  12 <b>That's --</b>  13 Q. That's, in other words, the price that  14 Northern --  15 <b>A. The invoice price we paid for the product.</b>  16 Q. To Wis-Pak?  17 <b>A. Wis-Pak, yes.</b>  18 Q. Does it include anything else?  19 <b>A. Does it include anything else? Well, I</b>  20 <b>know there's a difference between PepsiCo reports</b>  21 <b>and the way we do. PepsiCo never includes freight</b>  22 <b>to destination, as far as I can tell, and our</b>  23 <b>invoice price has some measure of freight in it to</b>  24 <b>get it shipped to Minot.</b>  25 Q. You're saying that's the invoice price you</p>
<p style="text-align: right;">127</p> <p>1 <b>term is gross profit.</b>  2 Q. Okay. That's one of the things I was  3 going to ask you about. The document, in each of  4 the headings at the top, says margin losses, and  5 you're saying that it should properly say gross  6 profit?  7 <b>A. I'm saying it could say that. This is a</b>  8 <b>document and these are terms that we use with our</b>  9 <b>salespeople to help them better understand the</b>  10 <b>components you referred to earlier of fixed and</b>  11 <b>incremental activity, and so forth.</b>  12 Q. Then just help us a little bit. When it  13 says margin losses on this particular document, what  14 is the margin loss? What does that capture?  15 <b>A. It's the -- margin in our system is</b>  16 <b>calculated as net revenue minus the cost of goods</b>  17 <b>sold.</b>  18 Q. And what does net revenue consist of?  19 <b>A. Net revenue is the invoice price in the</b>  20 <b>system.</b>  21 Q. Less any discounts or funding that the  22 company gets -- or customer gets?  23 <b>A. Well, the net price would be after</b>  24 <b>discounts.</b>  25 Q. Okay. So this morning we were talking</p>	<p style="text-align: right;">129</p> <p>1 get from Wis-Pak?  2 <b>A. Includes an element of freight, and I</b>  3 <b>believe PepsiCo does not include freight in their</b>  4 <b>calculations.</b>  5 Q. But what I want to do is just make sure we  6 understand --  7 <b>A. Yep.</b>  8 Q. -- this document. So in the cost of goods  9 sold that you use to calculate margin loss here or  10 gross profit, as you say, the cost of goods sold  11 included the price paid to Wis-Pak for the product  12 plus any freight that might have been incurred?  13 <b>A. No.</b>  14 Q. No?  15 <b>A. It's the net price, but you asked if it</b>  16 <b>was the same or if there was anything in it, and</b>  17 <b>just as a difference in how things are presented to</b>  18 <b>us by PepsiCo, I wanted to make that distinction.</b>  19 Q. Okay.  20 <b>A. I'm sorry if that's not right.</b>  21 Q. Let's focus on this document, if we can.  22 <b>A. Okay.</b>  23 Q. Just so it's clear then.  24 <b>A. Yeah, I want it to be clear.</b>  25 Q. The margin loss that is reflected on this</p>

<p style="text-align: right;">130</p> <p>1 document, Exhibit 2, is the net revenue that</p> <p>2 Northern Bottling receives from its customer minus</p> <p>3 the cost of goods sold, which is the floor cost that</p> <p>4 it pays to Wis-Pak for the beverage product?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Plus any freight cost that might have been</p> <p>7 incurred?</p> <p>8 <b>A. No.</b></p> <p>9 Q. Okay. What happens to the freight cost</p> <p>10 that Wis-Pak charges Northern to ship the product</p> <p>11 from Wisconsin to North Dakota?</p> <p>12 <b>A. It's included in the net invoice price. I</b></p> <p>13 <b>don't know what the exact amount is, but, like I</b></p> <p>14 <b>say, I'm sorry if I confused you. But there is a --</b></p> <p>15 <b>there is a difference in how PepsiCo looks at it and</b></p> <p>16 <b>how we look at.</b></p> <p>17 Q. In any event, the margin, the gross profit</p> <p>18 margin nets out freight cost?</p> <p>19 <b>A. In our case, yes. And the only reason I'm</b></p> <p>20 <b>kind of belaboring that is because the way Pepsi</b></p> <p>21 <b>does it, it sort of always seems like it</b></p> <p>22 <b>shortchanges us a little bit and it's a factor that</b></p> <p>23 <b>I think is important.</b></p> <p>24 Q. Well --</p> <p>25 <b>A. Sorry.</b></p>	<p style="text-align: right;">132</p> <p>1 Q. So in this calculation each time where</p> <p>2 there's a reference to margin loss, that includes</p> <p>3 products that Enerbase bought from Core-Mark, as</p> <p>4 well as products that -- strike that. Let me -- are</p> <p>5 you including in this margin calculation products</p> <p>6 such as the margin on products for Wis-Pak beverage</p> <p>7 products that Northern Bottling sold to Enerbase?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And also margins on Dr. Pepper products?</p> <p>10 <b>A. And Starbucks and Rockstar and Amp and</b></p> <p>11 <b>Kickstart and everything.</b></p> <p>12 Q. Everything that appears, for example, on</p> <p>13 the CDA agreements that we looked --</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. -- at earlier?</p> <p>16 <b>A. Because we were not able to get in there</b></p> <p>17 <b>and sell it.</b></p> <p>18 Q. Okay. Now, is -- I believe you testified</p> <p>19 earlier that Core-Mark did not sell to the Enerbase</p> <p>20 stores each and every one of the products that</p> <p>21 Northern had previously sold to Enerbase; isn't that</p> <p>22 right?</p> <p>23 <b>A. That's my understanding.</b></p> <p>24 Q. Okay. Why is it, then, that you would</p> <p>25 include in your margin losses products that were not</p>
<p style="text-align: right;">131</p> <p>1 Q. Let's stick to your calculation.</p> <p>2 <b>A. Okay.</b></p> <p>3 Q. And if Mr. Ragain wants to follow up, he</p> <p>4 can. What I want to do is make sure we all</p> <p>5 understand how you calculated it using Northern</p> <p>6 Bottling's system of accounting.</p> <p>7 <b>A. It's net revenue minus the invoice price</b></p> <p>8 <b>from Wis-Pak.</b></p> <p>9 Q. Okay. So let's take, for example, the</p> <p>10 column under Enerbase margin losses. For February</p> <p>11 of '15, that's the month of loss, there's the figure</p> <p>12 \$22,729. Can you tell us what that number</p> <p>13 represents?</p> <p>14 <b>A. It represents the margin from February of</b></p> <p>15 <b>2014 for the number of days, I believe, that we were</b></p> <p>16 <b>actually out of the store, I think.</b></p> <p>17 Q. And the margin on what products?</p> <p>18 <b>A. All products.</b></p> <p>19 Q. Every product Northern sold to Enerbase?</p> <p>20 <b>A. That's correct.</b></p> <p>21 Q. So you looked at whatever products were</p> <p>22 sold in the prior period, 2014, and assumed that you</p> <p>23 would have sold exactly the same amount in February</p> <p>24 of '15?</p> <p>25 <b>A. That was the assumption that we used.</b></p>	<p style="text-align: right;">133</p> <p>1 the subject of transshipment?</p> <p>2 <b>A. I was asked what we lost. What we lost</b></p> <p>3 <b>was what we were selling before, I think. I'm kind</b></p> <p>4 <b>of confused by the question.</b></p> <p>5 Q. Well, I think you answered it. You</p> <p>6 just --</p> <p>7 <b>A. Okay.</b></p> <p>8 Q. -- included every single product that</p> <p>9 Northern used to sell?</p> <p>10 <b>A. That we did not sell, but we made no</b></p> <p>11 <b>adjustment for the new products that we could have</b></p> <p>12 <b>sold, either, but I'm not -- I mean, damages is not</b></p> <p>13 <b>my -- I hope I'm not here trying to confirm or</b></p> <p>14 <b>testify what that number is.</b></p> <p>15 Q. What reason did you have to believe, as</p> <p>16 you prepared this document, that Enerbase from and</p> <p>17 after it kicked Northern out of the store would have</p> <p>18 continued to purchase products that it did not get</p> <p>19 from Core-Mark?</p> <p>20 MR. RAGAIN: Object to the form of the</p> <p>21 question. To me it doesn't make any sense. If you</p> <p>22 can answer, answer.</p> <p>23 THE WITNESS: If I understood, the reason</p> <p>24 that I did is because of our longstanding</p> <p>25 relationship with them prior to this, which, you</p>

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1 know, they've been a customer of Northern Bottling's  
2 in the 30 years that I've been there. So prior to  
3 that, they were purchasing what we were offering to  
4 sell.

5 Q. (MR. QUINN CONTINUING) But Northern --  
6 strike that. But Mr. Bernhardt and Enerbase were  
7 sufficiently unhappy with Northern Bottling that  
8 Enerbase said we're not going to buy anything from  
9 you, isn't that right, that's what happened in  
10 February of 2015?

11 A. Sufficiently happy?

12 Q. Unhappy.

13 A. Unhappy. So sufficiently unhappy.

14 MR. RAGAIN: Object to the form. Go  
15 ahead.

16 THE WITNESS: I don't know the answer to  
17 that.

18 Q. (MR. QUINN CONTINUING) Well, is it your  
19 understanding -- strike that. Enerbase didn't say  
20 to Northern, we're going to buy our Pepsi-Cola or  
21 Mountain Dew or Dr. Pepper products from Core-Mark,  
22 but we'll keep buying the rest of the products  
23 Northern Bottling sells from Northern Bottling? It  
24 didn't do that; did it?

25 A. I don't know the answer to that.

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1 Q. Do you know who at Northern Bottling would  
2 be in the best position to know that answer?

3 A. Todd would be -- have the definitive  
4 answer.

5 Q. And also --

6 A. I'd be making an assumption.

7 Q. Also someone at Enerbase would know the  
8 answer to that, too; right?

9 A. That's correct.

10 MR. RAGAIN: Object to the form. Calls  
11 for speculation.

12 Q. (MR. QUINN CONTINUING) Now, just so it's  
13 clear, what you did in the left-hand column under  
14 Enerbase margin losses is take for each month in  
15 2015 and then January, February and March of '16 the  
16 margin that you earned on all products sold to  
17 Enerbase in the prior year, in that month of the  
18 prior year; is that how it worked?

19 A. Yeah.

20 Q. Okay. And if we look in the next column  
21 over it says, Enerbase Fountain Margin Losses, and  
22 numbers begin there in April of 2016; isn't that  
23 right?

24 A. Correct.

25 Q. Why -- why did you start making that

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1 calculation in April of 2016?

2 A. Because at that point we began selling  
3 them bottle and can product, but we are still not  
4 selling them fountain product and same for the next  
5 column, Gatorade.

6 Q. Okay. Now, with respect to fountain  
7 products, are you aware of any evidence that  
8 Core-Mark was selling Enerbase PepsiCo beverage,  
9 fountain beverage products?

10 A. No.

11 Q. But you just included it because Northern  
12 was kicked out of the stores and it hasn't been able  
13 to sell fountain product, BIB, since that date?

14 A. Coca-Cola was invited to take our place on  
15 the counter and provide equipment and fountain  
16 products.

17 Q. Do you know why Enerbase made that  
18 decision? Do you have any personal knowledge of  
19 that?

20 MR. RAGAIN: Object to the form.

21 THE WITNESS: No, I don't have any  
22 personal knowledge.

23 Q. (MR. QUINN CONTINUING) Now, in the  
24 Gatorade column, why is it that you began to include  
25 Gatorade margin losses as of April of 2016?

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1 A. Because that product is being transshipped  
2 by another supplier still into that account, and  
3 PepsiCo, despite their numerous assurances, has not  
4 been able to stop it.

5 Q. Are Gatorade projects -- products subject  
6 to the transshipment policy?

7 A. I don't believe so.

8 Q. Okay.

9 A. In terms of the fine. I'm not sure what  
10 the policy is exactly. I know we're not getting  
11 fines on it.

12 Q. In fact, the agreement that Mr. Gokey has  
13 signed on behalf of Northern with PepsiCo relating  
14 to the distribution of Gatorade products  
15 specifically says the products are not currently  
16 covered by the company's transshipment enforcement  
17 program?

18 MR. RAGAIN: Object to the form. Answer,  
19 if you can.

20 THE WITNESS: I don't -- I've not read  
21 that agreement, I don't believe. I think it also,  
22 though, if we're going to speculate, says we have an  
23 exclusive territory --

24 Q. (MR. QUINN CONTINUING) I'm going to give  
25 you a copy of the agreement.

<p style="text-align: right;">138</p> <p>1       <b>A. Oh.</b></p> <p>2       Q. That way you can take a look.</p> <p>3       MR. QUINN: Let me ask the court reporter</p> <p>4       to mark as Deposition Exhibit 3, Peterson Deposition</p> <p>5       Exhibit 3, a copy of Gatorade/GT/Propel Distribution</p> <p>6       Agreement made and entered as of October 15, 2010</p> <p>7       between PepsiCo and Northern Bottling.</p> <p>8       (Deposition Exhibit 3 was marked for</p> <p>9       identification.)</p> <p>10       MR. RAGAIN: What's the number?</p> <p>11       THE WITNESS: Three.</p> <p>12       Q. (MR. QUINN CONTINUING) Mr. Peterson, I've</p> <p>13       handed you what has been marked as Peterson</p> <p>14       Deposition Exhibit 3. Have you ever seen this</p> <p>15       document before?</p> <p>16       <b>A. I'm not sure.</b></p> <p>17       Q. Could you just take a look at page 15 of</p> <p>18       the document? Do you recognize --</p> <p>19       <b>A. (Indicating.)</b></p> <p>20       Q. Yes. Do you recognize the signature</p> <p>21       underneath Northern Bottling Company, Minot, North</p> <p>22       Dakota to be the signature of Langer Gokey?</p> <p>23       <b>A. I do.</b></p> <p>24       Q. Since you haven't seen this document</p> <p>25       before, I'm not going to ask you any other questions</p>	<p style="text-align: right;">140</p> <p>1       <b>purchase Gatorade, which comes from PepsiCo through</b></p> <p>2       <b>Wis-Pak, is my understanding.</b></p> <p>3       Q. Is the Gatorade product that is being sold</p> <p>4       in Enerbase stores now, the 32-ounce Gatorade?</p> <p>5       <b>A. I don't know that. I'm under the</b></p> <p>6       <b>assumption that it is.</b></p> <p>7       Q. Let's get back to Mr. Hillestad. What is</p> <p>8       it that he has told you? What has he reported to</p> <p>9       you about what he learned from Enerbase regarding</p> <p>10       why Enerbase has continued to purchase Gatorade</p> <p>11       product --</p> <p>12       MR. RAGAIN: Object to the form.</p> <p>13       Q. (MR. QUINN CONTINUING) -- from a source</p> <p>14       other than Northern Bottling?</p> <p>15       <b>A. What he's reported to me is that they can</b></p> <p>16       <b>purchase it from Morelli, who is another</b></p> <p>17       <b>distributor, cheaper than they can buy it from us</b></p> <p>18       <b>and they felt like they did not want to say no to</b></p> <p>19       <b>Morelli.</b></p> <p>20       Q. Did you learn any reasons why?</p> <p>21       <b>A. It's -- they think they're being more fair</b></p> <p>22       <b>or something. I don't know.</b></p> <p>23       Q. Now, Northern Bottling doesn't -- does not</p> <p>24       have the right to distribute Gatorade product to</p> <p>25       stores like Walmart in this territory?</p>
<p style="text-align: right;">139</p> <p>1       other than to authenticate Mr. Gokey's signature.</p> <p>2       <b>A. Thank you.</b></p> <p>3       Q. But I would just ask you to take a look at</p> <p>4       page 3. It's in subparagraph (b), just to confirm</p> <p>5       that the last sentence of that paragraph states, The</p> <p>6       products are not currently covered by the company --</p> <p>7       by company's transshipment enforcement program.</p> <p>8       Do you see that?</p> <p>9       <b>A. That is correct.</b></p> <p>10       Q. Okay. Getting back to Exhibit 2, if you</p> <p>11       would put that back in front of you.</p> <p>12       <b>A. Okay.</b></p> <p>13       Q. So you included these numbers under the</p> <p>14       Gatorade margin losses because Northern Bottling</p> <p>15       isn't selling Gatorade to the Enerbase stores?</p> <p>16       <b>A. That is correct.</b></p> <p>17       Q. To your knowledge, has anyone from</p> <p>18       Northern Bottling approached Enerbase to find out</p> <p>19       why Enerbase is not purchasing Gatorade products</p> <p>20       from Northern?</p> <p>21       <b>A. Yes.</b></p> <p>22       Q. Who was that?</p> <p>23       <b>A. It's Todd Hillestad, but it's pretty</b></p> <p>24       <b>common knowledge that you can go to Walmart and</b></p> <p>25       <b>purchase 32-ounce Gatorade cheaper than we can</b></p>	<p style="text-align: right;">141</p> <p>1       <b>A. That is correct.</b></p> <p>2       Q. In fact, Northern Bottling only has a</p> <p>3       narrow channel in the C&amp;G channel where it has</p> <p>4       exclusive distribution rights with respect to</p> <p>5       Gatorade?</p> <p>6       <b>A. Correct.</b></p> <p>7       Q. So in any other channel in Northern's</p> <p>8       territory the rights are either nonexclusive or</p> <p>9       belong to some other entity; correct?</p> <p>10       <b>A. Yeah, I don't really know.</b></p> <p>11       Q. Is that your general understanding?</p> <p>12       <b>A. That would be an assumption, yes, an</b></p> <p>13       <b>understanding.</b></p> <p>14       Q. Okay. Okay. Back to Exhibit 2 then.</p> <p>15       Let's just finish going through each of these</p> <p>16       columns. So in the column for FUO Cenex Devils</p> <p>17       Lake, that particular column, again, has figures</p> <p>18       beginning in May of 2016 and continuing through</p> <p>19       March; isn't that right?</p> <p>20       <b>A. Correct.</b></p> <p>21       Q. And, once again, that's the total margin</p> <p>22       on all Northern Bottling products sold to Devils</p> <p>23       Lake for the corresponding month in the prior year?</p> <p>24       <b>A. Correct.</b></p> <p>25       Q. And you employed the same --</p>

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1 **A. Methodology.**

2 Q. -- methodology with respect to Envision  
3 margin losses and Cenex Harley margin losses?

4 **A. That is correct.**

5 Q. So each time you look to the corresponding  
6 month in 2014, figured out what the total margin was  
7 that Northern earned on the sale of all its products  
8 and then put that number in the column here on  
9 Exhibit 2?

10 **A. Yes.**

11 Q. Okay. And then in the far right-hand  
12 column where it says "total margin losses," what you  
13 did is sum across each of the columns to get a  
14 total?

15 **A. By month, yes.**

16 Q. And then the number of \$550,332 is the  
17 total of all of the margin losses recorded on  
18 Exhibit 2 for each of these customers?

19 **A. Yes.**

20 Q. Okay. And then as I understand it --  
21 well, strike that. Then is it true that you  
22 subtracted from that \$550,332 figure \$110,395  
23 representing the amount of transshipment fines that  
24 Northern Bottling received in connection with the  
25 transshipments that had been reported and

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1 investigated in its territory?

2 **A. To date.**

3 Q. To date?

4 **A. Correct.**

5 Q. And this particular report goes through  
6 March 31st, 2017?

7 **A. Correct.**

8 Q. And then you subtracted that \$110,395  
9 figure from \$550,332 and that gave you \$439,936?

10 **A. Yeah, looks like there's a little rounding  
11 error there, but, yes.**

12 Q. Okay. Now, down below that there's a  
13 sentence that reads, "Net loss does not include  
14 ongoing pricing losses of (78 cents plus 76 cents on  
15 20,000 cases). And then there's a figure \$30,800 to  
16 the right of that. Do you see that?

17 **A. Yes.**

18 Q. Can you tell us what that sentence means?

19 **A. Well, I think it means that in the time of  
20 the transshipment we were able to get price increase  
21 from most of our other customers and we were -- we  
22 had to make a price concession to Enerbase to get  
23 back in there of some type or another.**

24 Q. What was the price concession?

25 **A. I think that's what it means.**

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1 Q. What was the price concession?

2 **A. Price concession I think would be a  
3 reduction in price for them.**

4 Q. Okay. Do you know what that amount was?

5 **A. I do not, not without checking.**

6 Q. Okay. And there's two figures, 78 cents  
7 and 76 cents. Do you know what those refer to?

8 **A. I'm not sure what it was at the time.**

9 Q. So you're saying that because Northern had  
10 to lower its prices to get Enerbase to be willing to  
11 let Northern back into the account, that those are  
12 damages that Northern should be able to claim  
13 against PepsiCo?

14 **A. Those are lost margins, yes.**

15 Q. They are lost margins that Northern should  
16 be able to claim against PepsiCo?

17 **A. I don't know.**

18 Q. You just consider them to be losses to  
19 Northern?

20 **A. I wanted it to be on there as that there  
21 was more to it.**

22 Q. And then the last sentence says, "These  
23 losses could go on indefinitely." Do you see that?

24 **A. Mm-hmm.**

25 Q. Well, in fact, at Enerbase Northern is

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1 back in the account.

2 **A. I think indefinitely refers to the pricing  
3 losses.**

4 Q. Oh, the pricing losses?

5 **A. (Nods.)**

6 Q. Because you think that Northern is not  
7 going to be able to negotiate higher prices with  
8 Enerbase or Devils Lake or Envision or Cenex in the  
9 future?

10 **A. Well, we have not been able to date to get  
11 a written agreement as to pricing, so our ability to  
12 negotiate a higher price seems a little bit stunted.**

13 Q. Do you know what the profit margin has  
14 been that Northern has earned on -- let's take  
15 Enerbase, for example, on Enerbase products, Pepsi  
16 products that it sold?

17 **A. I don't know what that number would be  
18 without looking.**

19 Q. How about Envision?

20 **A. It would be the same answer for each  
21 customer.**

22 MR. QUINN: Okay. Let me ask the court  
23 reporter to mark as Peterson Deposition Exhibit 4 a  
24 document, multipage document with NB Bates  
25 numbers 0000610 through 671.

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1 (Deposition Exhibit 4 was marked for  
2 identification.)

3 Q. (MR. QUINN CONTINUING) Mr. Peterson, I  
4 promise you I'm not going to ask you about every  
5 single item in that, but what I would like to ask  
6 you to start with is to explain what type of  
7 information this particular exhibit contains.

8 **A. Well, just on the first page here it's a**  
9 **report from our sales reporting tool. It says the**  
10 **period covered is 1-2012 through 12-2012. Trend**  
11 **means it's those periods only. It's from our sales**  
12 **cube, which is a data set. Soft drink hard cases,**  
13 **Envision is the channel, the package -- or I'm**  
14 **sorry -- is the chain. The package is one-liter**  
15 **bottles, 15 count. The brand is Mountain Dew Diet**  
16 **on this particular page.**

17 Q. That's on the first page?

18 **A. That's on the first page.**

19 Q. Let's just use this to figure out how to  
20 read and understand the document so that somebody  
21 who is taking a look at it can comprehend it.

22 **A. If I may, we were asked to produce the**  
23 **price that product was sold by month, by package, by**  
24 **brand of the brands that were transhipped, if I**  
25 **remember right.**

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1 Q. Okay. And that's this particular packet  
2 that we have here relates to the Envision chain --

3 **A. Yes.**

4 Q. -- is that correct? And I believe if you  
5 look through and go to page 684 in the document,  
6 that's the beginning of information relating to the  
7 period from January 2013 through --

8 **A. I'm sorry. Did you say 684?**

9 Q. Yes.

10 **A. Mine stops at 671, I think. Am I not**  
11 **looking at this right? Oh, wait. 684 is in the**  
12 **middle. I just happened to flip to it.**

13 Q. Yeah. I see that those don't necessarily  
14 all go in numerical order. And the question is,  
15 does this particular document also include the same  
16 information for the period from January 1st, 2013  
17 through April of 2017?

18 **A. Correct.**

19 Q. Okay. Let's just go back to the first  
20 page to make sure that we're all on the same page.

21 **A. I apologize, but we had a software upgrade**  
22 **last year and we're working off of two -- the same**  
23 **type of system, but two different data sets and we**  
24 **couldn't transfer.**

25 Q. And that's why --

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1 **A. That's why we had to put it in two**  
2 **reports.**

3 Q. Okay. Okay. So just looking at the front  
4 page to make sure we understand how to read this.  
5 It's a monthly calculation?

6 **A. Mm-hmm.**

7 Q. And then there's a column called quantity  
8 sold and that refers to the number of cases sold --

9 **A. Correct.**

10 Q. -- in each month? And then there is a net  
11 price --

12 **A. Correct.**

13 Q. -- category and that is net price charged  
14 to the customer?

15 **A. Yes.**

16 Q. And that is the net price that you  
17 described earlier in your testimony?

18 **A. Net revenue.**

19 Q. Okay. Net revenue. And then there's a  
20 column called unit profit?

21 **A. Mm-hmm.**

22 Q. What is that?

23 **A. That unit profit is the profit per case**  
24 **each month for the number of cases.**

25 Q. Okay. How -- how was that -- is that

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1 figure calculated?

2 **A. It's -- it's essentially -- not**  
3 **essentially. It's the same as the gross margin**  
4 **report on the other report.**

5 Q. That we -- going back to page 684.

6 **A. Exhibit 2. Exhibit 2.**

7 Q. Oh, I see.

8 **A. Gross margin, unit profit. This gross**  
9 **margin is total dollars. Unit profit is per case.**  
10 **Should be consistent throughout.**

11 Q. So just so I -- we all understand it then,  
12 looking at the first line on the front page of  
13 Exhibit 4 where there is a net price of \$18.20 and a  
14 unit price of \$9.72?

15 **A. Unit profit.**

16 Q. Oh, unit profit. You're right. Sorry.  
17 \$9.72 equals the net price minus the invoice price?

18 **A. Correct.**

19 Q. Cost of goods sold?

20 **A. Correct.**

21 Q. For a case of, on the front page, Mountain  
22 Dew Diet during that month?

23 **A. One-liter 15 count, yes.**

24 Q. And this -- all this information is part  
25 of an accounting system that Northern has?

<p style="text-align: right;">150</p> <p>1       <b>A. A sales reporting tool, yes.</b></p> <p>2       Q. Sales reporting. What's it called?</p> <p>3       <b>A. What's it called today? I still call it</b></p> <p>4       <b>Margin Minder. That was its first name. I think</b></p> <p>5       <b>they call it UXT data miner now or something like</b></p> <p>6       <b>that.</b></p> <p>7       Q. And Exhibit 4 is one -- is an exhibit that</p> <p>8       you prepared for Envision relating to all of the</p> <p>9       products that Core-Mark transshipped to the Envision</p> <p>10       stores?</p> <p>11       <b>A. We prepared it for -- as one of the</b></p> <p>12       <b>questions of the Envision stores.</b></p> <p>13       Q. Right. Now, if one wanted to figure out</p> <p>14       what the margin rate was?</p> <p>15       <b>A. Margin rate.</b></p> <p>16       Q. Profit rate, gross profit rate for</p> <p>17       example -- maybe that's not the term you use. You</p> <p>18       can keep --</p> <p>19       <b>A. Yes.</b></p> <p>20       Q. I want to make sure -- you could take unit</p> <p>21       profit, let's just look at 11 -- or 1212. Unit</p> <p>22       profit there is \$9.72. This is the first page of</p> <p>23       Exhibit 4; right?</p> <p>24       <b>A. Yep.</b></p> <p>25       Q. If I want to figure out what that profit</p>	<p style="text-align: right;">152</p> <p>1       <b>A. It's a -- it's a retailer. They</b></p> <p>2       <b>specialize in agricultural, equine, livestock. Pat,</b></p> <p>3       <b>help me out.</b></p> <p>4       Q. Is Tractor Supply Company in Northern's</p> <p>5       territory?</p> <p>6       <b>A. We have six of the 1,500 stores, I</b></p> <p>7       <b>believe. I don't -- I know we have six. I think</b></p> <p>8       <b>the total is around 1,500 nationwide.</b></p> <p>9       Q. So how do you know what PepsiCo is</p> <p>10       proposing to Tractor Supply?</p> <p>11       <b>A. They post it. They send us a notice and</b></p> <p>12       <b>say this is what we're proposing to sell to this</b></p> <p>13       <b>customer.</b></p> <p>14       Q. As part of a national program?</p> <p>15       <b>A. Yes.</b></p> <p>16       Q. Okay. And this is involving independent</p> <p>17       bottlers as well as PBC?</p> <p>18       <b>A. Correct.</b></p> <p>19       Q. And what does that notice indicate? How</p> <p>20       does it get to whatever the gross margin is?</p> <p>21       <b>A. Well, there's a table that gives the net</b></p> <p>22       <b>selling price, a customer development fee that</b></p> <p>23       <b>PepsiCo is asking us to pay, down to net revenue per</b></p> <p>24       <b>case and then they're putting in what they think the</b></p> <p>25       <b>cost of goods is, which is back to our previous</b></p>
<p style="text-align: right;">151</p> <p>1       rate is, I could divide \$9.72 by \$18.20?</p> <p>2       <b>A. Okay. Percentage rate, yes.</b></p> <p>3       Q. Yes, percentage rate. So we're not going</p> <p>4       to get a calculator and do all of that, but just</p> <p>5       eyeballing that, that would indicate to you for that</p> <p>6       particular month and those cases of Mountain Dew</p> <p>7       sold to Envision, Northern Bottling was earning a</p> <p>8       gross profit percentage in excess of 50 percent;</p> <p>9       right?</p> <p>10       <b>A. Not uncommon.</b></p> <p>11       Q. Okay. Why do you say that?</p> <p>12       <b>A. I just reviewed a proposal from Pepsi and</b></p> <p>13       <b>the profit margins are kind of -- for each package</b></p> <p>14       <b>are a little different here and there, but this is</b></p> <p>15       <b>in line with what they're proposing to other</b></p> <p>16       <b>customers as well, getting back to how pricing is</b></p> <p>17       <b>set.</b></p> <p>18       Q. PepsiCo is proposing to other customers?</p> <p>19       <b>A. Yes.</b></p> <p>20       Q. Which customers?</p> <p>21       <b>A. This particular one is Tractor Supply</b></p> <p>22       <b>Company. We get proposals, I don't know, once a</b></p> <p>23       <b>week. That's maybe a little high, but --</b></p> <p>24       Q. Tell us a little about -- what's Tractor</p> <p>25       Supply Company?</p>	<p style="text-align: right;">153</p> <p>1       <b>point, theirs is always different than ours, usually</b></p> <p>2       <b>lower, and then they're saying look at how much</b></p> <p>3       <b>money you're going to make.</b></p> <p>4       Q. I see.</p> <p>5       <b>A. And because their cost of goods is lower,</b></p> <p>6       <b>they show a higher profit typically than we do.</b></p> <p>7       Q. Okay. Okay. But this is -- what you were</p> <p>8       talking about is some national account proposal</p> <p>9       where groups of bottlers are being asked to</p> <p>10       participate in the proposal?</p> <p>11       <b>A. Yes.</b></p> <p>12       Q. Okay. All right. Last question about</p> <p>13       this Exhibit 4 --</p> <p>14       <b>A. Yes.</b></p> <p>15       Q. -- for right now. If you turn back to</p> <p>16       page 684.</p> <p>17       <b>A. I should have marked it. Here it is.</b></p> <p>18       Q. I'll tell you what, if it helps --</p> <p>19       <b>A. If we're going to go back, yeah, I'll find</b></p> <p>20       <b>it quickly.</b></p> <p>21       Q. -- put a little tab there and that will</p> <p>22       help you.</p> <p>23       <b>A. Thank you.</b></p> <p>24       Q. And, actually, I just wanted to go to 685</p> <p>25       to make sure that we all understand this. At the</p>

<p style="text-align: right;">154</p> <p>1 end of this particular summary, which is for Pepsi</p> <p>2 Diet, 20-ounce bottle, 24 to a case, there is an</p> <p>3 average that's calculated and below that it says</p> <p>4 totals and there are -- in this particular one it</p> <p>5 says 1,015 --</p> <p>6 <b>A. Mm-hmm.</b></p> <p>7 Q. -- on 685, \$23 and then 14.91 in each of</p> <p>8 the columns across. Could you tell us how those</p> <p>9 figures are calculated with this sales tool?</p> <p>10 <b>A. Well, the total units sold is the sum</b></p> <p>11 <b>total of the quantity sold. I believe that the net</b></p> <p>12 <b>price of 23 is the weighted average price. And the</b></p> <p>13 <b>unit price is also a weighted average unit profit.</b></p> <p>14 Q. Of all of the --</p> <p>15 <b>A. Of all the transactions.</b></p> <p>16 Q. -- entries for all the months?</p> <p>17 <b>A. Yes. Correct.</b></p> <p>18 Q. And by weighted average, without getting</p> <p>19 into the nitty gritty, that's taking into account</p> <p>20 the price and the numbers sold at any period?</p> <p>21 <b>A. Correct, Tom.</b></p> <p>22 MR. QUINN: Okay. Why don't we take a</p> <p>23 short break and I think get some exhibits set up and</p> <p>24 we're getting pretty close.</p> <p>25 MR. EMINETH: We're off the video and off</p>	<p style="text-align: right;">156</p> <p>1 exhibits off your sales tool in order to produce the</p> <p>2 information relating to products that Core-Mark sold</p> <p>3 to each of these customers during the period that</p> <p>4 Northern was kicked out of the stores?</p> <p>5 <b>A. Well, it's for the period that was</b></p> <p>6 <b>requested because it's --</b></p> <p>7 Q. It covers more than just the period when</p> <p>8 Northern was out of the stores?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. In other words, it covers the period</p> <p>11 actually from January 1st of 2012 through the end of</p> <p>12 April 2017?</p> <p>13 <b>A. Yes. Correct.</b></p> <p>14 Q. I'd just like to ask you to do a little</p> <p>15 comparison and let's start with -- if you just get</p> <p>16 Exhibit 4 and 5 in front of you. And --</p> <p>17 <b>A. Five, 4. Okay.</b></p> <p>18 Q. If you could turn in Exhibit 4 to page</p> <p>19 683?</p> <p>20 <b>A. Okay.</b></p> <p>21 Q. If it helps, this is the summary of sales</p> <p>22 of Mountain Dew to the Envision stores --</p> <p>23 <b>A. Got it.</b></p> <p>24 Q. -- for the period from January of 2013</p> <p>25 through April 2017.</p>
<p style="text-align: right;">155</p> <p>1 the record at 2:02 p.m.</p> <p>2 (Recess was taken.)</p> <p>3 (Deposition Exhibits 5, 6, and 7 were</p> <p>4 marked for identification.)</p> <p>5 MR. EMINETH: We're back on the video,</p> <p>6 back on the record at 2:11 p.m.</p> <p>7 Q. (MR. QUINN CONTINUING) Mr. Peterson, I'm</p> <p>8 going to hand you what the court reporter has marked</p> <p>9 as Peterson group Exhibits 5, 6, and 7. And, again,</p> <p>10 I'm not going to ask you detailed questions about</p> <p>11 every page there.</p> <p>12 I just -- starting with Exhibit 5, can you</p> <p>13 confirm for us that that Exhibit 5 is a similar</p> <p>14 compilation of sales, net price, unit profit, for</p> <p>15 products sold to Enerbase, similar, that is, to</p> <p>16 Exhibit 4?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And Exhibit 6 is the same type of</p> <p>19 compilation for products sold to Cenex Devils Lake?</p> <p>20 <b>A. Or Farmers Union Oil as it's called in the</b></p> <p>21 <b>more recent system.</b></p> <p>22 Q. And, finally, Exhibit 7 is the same</p> <p>23 compilation for Cenex Harley's?</p> <p>24 <b>A. Correct.</b></p> <p>25 Q. So you -- you generated each of these</p>	<p style="text-align: right;">157</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. Got that. And then for Exhibit 5, I</p> <p>3 believe for the same period on page 662 and 663 you</p> <p>4 see sales of Mountain Dew to the Enerbase stores.</p> <p>5 <b>A. 662 and 663?</b></p> <p>6 Q. 663, right.</p> <p>7 <b>A. Yes, got them.</b></p> <p>8 Q. Okay. And, actually, if you have 683 and</p> <p>9 663 side by side --</p> <p>10 <b>A. Yep.</b></p> <p>11 Q. -- that's why I want to ask you a</p> <p>12 question. Now, each of those pages summarizes the</p> <p>13 total sales to Envision in the case of Exhibit 4 and</p> <p>14 Enerbase in the case of Exhibit 5 of Mountain Dew</p> <p>15 20-ounce products during the period from January</p> <p>16 1st, 2013 through April 2017; isn't that right?</p> <p>17 <b>A. That is correct.</b></p> <p>18 Q. In the case of the Envision -- yes, the</p> <p>19 Envision stores, the average price for this Mountain</p> <p>20 Dew 20 ounce is \$24.64, but in the case of Envision</p> <p>21 it's \$25.64. Do you see that?</p> <p>22 <b>A. Mm-hmm.</b></p> <p>23 Q. Can you explain why there's a difference</p> <p>24 in price that's charged to Envision versus Enerbase?</p> <p>25 <b>A. I -- without looking, I can't tell you for</b></p>

<p style="text-align: right;">158</p> <p>1 sure, but I believe they were on different programs.</p> <p>2 I believe that -- I think Envision was on a white or</p> <p>3 blue program and I believe that Enerbase was on a</p> <p>4 red or red-style program. I don't know that</p> <p>5 Enerbase had signed an agreement in years, honestly,</p> <p>6 come to think of it.</p> <p>7 Q. So, in other words, Enerbase paid a higher</p> <p>8 price for its Mountain Dew 20 ounce than Envision</p> <p>9 did?</p> <p>10 A. Yes, it did less promotions and most</p> <p>11 likely gave us less space, but promotions also</p> <p>12 factor very heavily into this pricing.</p> <p>13 Q. And in the case of Enerbase, Northern</p> <p>14 Bottling made a higher profit rate than it did in</p> <p>15 the Envision stores?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And if you -- to just kind of</p> <p>18 broaden this out, if you get Exhibit 6, again,</p> <p>19 looking at page 703.</p> <p>20 A. Okay.</p> <p>21 Q. This particular page shows that for Devils</p> <p>22 Lake for the same Mountain Dew 20 ounce, the average</p> <p>23 price was \$24.88 and the average gross profit was</p> <p>24 \$16.74 a case?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">160</p> <p>1 A. Yep.</p> <p>2 Q. -- before it decided not to purchase</p> <p>3 product anymore from Northern Bottling?</p> <p>4 A. Yes, they did. And, in fact, I think when</p> <p>5 this whole thing blew up, we had two of the three</p> <p>6 stores already set and signed and done and it was</p> <p>7 the third store that caused a problem. So they had</p> <p>8 already accepted it, two-thirds of their volume --</p> <p>9 or two-thirds of their stores.</p> <p>10 Q. And this was the problem with the shelf</p> <p>11 space allocation; correct?</p> <p>12 A. Yes.</p> <p>13 Q. Mr. Peterson, have you personally had any</p> <p>14 communications with other independent bottlers</p> <p>15 regarding this lawsuit?</p> <p>16 A. I think the answer has to be yes.</p> <p>17 Q. With whom?</p> <p>18 A. Oh, gosh. At one point any meeting I went</p> <p>19 to, virtually any independent bottler would walk up</p> <p>20 and ask for information, how is it going, what's</p> <p>21 happening.</p> <p>22 Q. What meetings are you talking about?</p> <p>23 A. I'm talking about -- Pepsi calls it an AOP</p> <p>24 meeting, annual operating plan. There have been GMA</p> <p>25 meetings, which are -- GMA is greater marketing</p>
<p style="text-align: right;">159</p> <p>1 Q. Can you explain to us why that price and</p> <p>2 profit margin differs from Enerbase and Envision?</p> <p>3 A. Once again, it has to do with number and</p> <p>4 length of promotion and amount of space allocated to</p> <p>5 PepsiCo products.</p> <p>6 Q. Okay. And would your answer be the same</p> <p>7 with respect to Harley's if the number were</p> <p>8 different --</p> <p>9 A. Yes.</p> <p>10 Q. -- for the same Mountain Dew 20-ounce</p> <p>11 product? So in each of these cases or each of these</p> <p>12 customers, Northern Bottling may have earned higher</p> <p>13 or lower profit rate depending upon the amount of</p> <p>14 shelf space?</p> <p>15 A. Yeah, and that's common in the industry,</p> <p>16 as far as I know.</p> <p>17 Q. Did Harley's sign a CDA agreement at any</p> <p>18 time over the past four or five years?</p> <p>19 A. Oh, yes, I believe they signed CDA</p> <p>20 agreements. And I'm working off of memory, but I</p> <p>21 believe that they did. I don't know where we're at</p> <p>22 currently with them, whether it's signed or not</p> <p>23 signed.</p> <p>24 Q. How about Devils Lake, did Devils Lake</p> <p>25 sign CDA agreements --</p>	<p style="text-align: right;">161</p> <p>1 area.</p> <p>2 Q. Any others?</p> <p>3 A. Those are the two that come to mind.</p> <p>4 Q. Have you contacted any other independent</p> <p>5 bottlers to request that they serve as witnesses in</p> <p>6 this suit?</p> <p>7 A. No, I have not.</p> <p>8 Q. Has Northern Bottling received any</p> <p>9 financial assistance from other bottlers in</p> <p>10 connection with the cost of this litigation?</p> <p>11 A. I've not seen any come through our system.</p> <p>12 Q. Has any other independent bottler</p> <p>13 suggested to you or, to your knowledge, anyone else</p> <p>14 at Northern that he or she would be willing to</p> <p>15 testify as a witness in this litigation?</p> <p>16 A. Not to me.</p> <p>17 Q. To your knowledge, has an independent</p> <p>18 bottler said that to anyone else at Northern?</p> <p>19 A. Not to my knowledge.</p> <p>20 MR. QUINN: No further questions.</p> <p>21 MR. RAGAIN: Let's just sit here for a</p> <p>22 second. I don't think we even need to take a break.</p> <p>23 No questions.</p> <p>24 MR. EMINETH: This is the end of the</p> <p>25 audiovisual deposition of Bruce Peterson taken at</p>

<p style="text-align: right;"><b>162</b></p> <p>1 Bismarck, North Dakota on June 28, 2017. We're off  2 the video and off the record at 2:24 p.m.  3 (Concluded at 2:24 p.m., the same day.)  4 -----  5  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>	<p style="text-align: right;"><b>164</b></p> <p>1  2 CERTIFICATE OF COURT REPORTER AND NOTARY PUBLIC  3 STATE OF NORTH DAKOTA )  4 ) ss.  5 COUNTY OF BURLEIGH )  6 BE IT KNOWN that I, Linda L. Gingery, a  7 Registered Professional Reporter, took the  8 deposition herein pursuant to Notice; that I was  9 then and there a Notary Public in and for said  10 County and State; that I exercised the power of that  11 office in taking said deposition; that by virtue  12 thereof, I was then and there authorized to  13 administer the oath; that said witness, before  14 testifying, was duly sworn to testify the truth, the  15 whole truth and nothing but the truth relative to  16 the cause specified therein;  17 That the said deposition, having been  18 transcribed, was subsequently submitted to the said  19 witness, who thereupon read the said deposition and  20 made changes or corrections, if any, as appear noted  21 therein, along with the reason for each thereof, and  22 that the said deposition was thereupon subscribed to  23 by the said witness; that the examination was  24 conducted at the time and place therein specified on  25 behalf of the respective parties as therein  indicated; that the foregoing and attached  typewritten pages contain a full, true, accurate and  correct transcript of my shorthand notes, as they  purport to contain, then and there taken;  That I am neither attorney or counsel for,  nor related to or employed by, any of the parties to  the action in which said deposition is taken; and,  further, that I am not a relative or employee of any  attorney or counsel employed by the parties thereto  or financially interested in the action.  WITNESS MY HAND AND SEAL this ____ day of  _____, 2017.  _____  Linda L. Gingery  Court Reporter and Notary Public  My commission expires: 2/19/22</p>
<p style="text-align: right;"><b>163</b></p> <p>1  2 CERTIFICATE OF DEPONENT  3  4  5 I, BRUCE PETERSON, the deponent in the  6 foregoing deposition,  7 DO HEREBY CERTIFY, that I have read the  8 foregoing and attached 162 pages, and that the same  9 are, with changes and corrections, if any, set forth  10 on the following correction sheets (setting forth  11 the reason assigned for each change or correction,  12 and duly signed by me), a full, true, accurate and  13 correct transcript of my deposition on oral  14 examination given at the time and place therein  15 indicated.  16 Dated this _____ day of _____,  17 2017.  18  19  20  21 _____  22 BRUCE PETERSON  23  24  25</p>	

A				
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